SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 7

HARTFORD-EMPIRE COMPANY, F. GOODWIN SMITH, BARTLETT ARKELL, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 8

CORNING GLASS WORKS, EMPIRE MACHINE COMPANY, ALEXANDER D. FALCK, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 9

OWENS-ILLINOIS GLASS COMPANY, WILLIAM E. LEVIS, E. F. MARTIN, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 10

HAZEL-ATLAS GLASS COMPANY, J. HARRISON McNASH, WALTER H. McCLURE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 11

THATCHER MANUFACTURING COMPANY, H. C. MANDEVILLE, R. W. NIVER, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

[CONTINUED ON PAGE TWO]

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 29, 1943.

—5911

[CONTINUED FROM PAGE ONE]

No. 12

LYNCH CORPORATION, THOMAS CHANDLER WERBE, E. G. BRIDGES, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 13

BALL BROTHERS COMPANY, FRANK CLAYTON BALL, GEORGE A. BALL, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 14

GLASS CONTAINER ASSOCIATION OF AMERICA, INC., CHARLES R STEVENSON AND EMORY G. ACKERMAN, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 15

ISAAC J. COLLINS, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

No. 16

T. C. FULTON, W. V. FISHER AND J. D. DILWORTH, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

VOL. II

INDEX OF WITNESSES

TESTIMONY OF:	Orig.	Print (Vol.)
Ackerman, Emory G.		
Direct	6274	3460 (v)
Cross	6423	3552 (v)
Redirect	6491	3594 (v)
Recross	6494	3596 (v)
Avery, C. R.		
Stipulated...(omitted in printing)	12214	
Baker, H. H.		
Direct	4291	2298 (III)
Cross	4324	2316 (III)
Redirect	4332	2321 (III)
Recross	4334	2323 (III)
Ball, E. Arthur		
Direct	11601	6537 (IX)
Cross	11614	6546 (IX)
Redirect	11624	6553 (IX)
Recross	11626	6555 (IX)
Ball, Frank C.		
Deposition read	7696	4261 (VI)
Ball, George A.		
Direct	5527	3027 (IV)
Cross	5606	3070 (IV)
Redirect	5618	3078 (IV)
Recross	5621	3080 (IV)
Bartlett, E. E.		
Stipulated...(omitted in printing)	12161	
Batchell, G. W.		
Direct	12051	6774 (IX)
Cross	12053	6775 (IX)
Belknap, C. B.		
Direct	3340	1769 (III)
Direct (Recalled)	3610	1897 (III)
Direct (Recalled)	11463	6455 (IX)
Cross	11522	6490 (IX)
Redirect	11568	6519 (IX)
Recross	11572	6522 (IX)
Blair, J. C.		
Direct	4228	2266 (III)
Cross	4284	2293 (III)
Blunt, Royden A.		
Stipulated	11935	6716 (IX)
Bowes, Urban E.		
Direct	6268	3456 (v)
Direct	11578	6524 (IX)
Stipulated	12031	6764 (IX)
Brown, Robson D.		
Direct	7251	4005 (VI)
Cross	7313	4046 (VI)
Redirect	7361	4077 (VI)

INDEX OF WITNESSES—Continued

Testimony of—Continued

Brown, Robson D.—Continued	Orig.	Print (Vol.)
Recross	7370	4088 (vi)
Direct	10787	6041 (viii)
Direct	10972	6151 (viii)
Cross	10975	6153 (viii)
Redirect	11060	6209 (viii)
Direct	11075	6218 (viii)
Recross	11078	6220 (viii)
Direct	11439	6440 (ix)
Cross	11457	6452 (ix)
Direct	11839	6666 (ix)
Cross	11892	6696 (ix)
Redirect	11897	6699 (ix)
Campbell, E. S.		
Stipulated...(omitted in printing)	12139	
Canfield, Robert W.		
Direct	10768	6028 (viii)
Cross	10784	6040 (viii)
Carnahan, John W.		
Direct	9990	5593 (viii)
Cross	10039	5626 (viii)
Redirect	10044	5630 (viii)
Carter, Henry W.		
Direct	2998	1571 (iii)
Direct	3143	1656 (iii)
Cross	3172	1671 (iii)
Coleman, S. A.		
Direct	3429	1825 (iii)
Cross	3450	1838 (iii)
Redirect	3499	1867 (iii)
Collin, Harry E.		
Direct	4695	2526 (iv)
Cross	4702	2531 (iv)
Redirect	4708	2535 (iv)
Collins, I. J.		
Direct	5308	2892 (iv)
Direct	5440	2975 (iv)
Cross	5496	3009 (iv)
Redirect	5520	3025 (iv)
Crile, W. M.		
Direct	12070	6786 (ix)
Cross	12073	6789 (ix)
Redirect	12077	6791 (ix)
Day, Arthur L., Dr.		
Direct	9600	5485 (vii)
Cross	9622	5499 (vii)
Day, George E.		
Direct	3103	1630 (iii)
Cross	3124	1643 (iii)

INDEX OF WITNESSES—Continued

Testimony of—Continued		
Day, George E.—Continued	Orig.	Print (Vol.)
Redirect	3139	1653 (III)
Recross	3141	1654 (III)
Redirect	3142	1655 (III)
Donnan, E. A.		
Stipulated...(omitted in printing)	12231	
Dorsey, Vernon A.		
Direct	11901	6700 (IX)
Cross	11908	6704 (IX)
Redirect	11921	6712 (IX)
Dorsey, Vernon M.		
Direct	6821	3774 (V)
Cross	6894	3809 (V)
Redirect	7026	3876 (V)
Direct	8706	4855 (VII)
Direct	8978	4993 (VII)
Cross	9218	5135 (VII)
Redirect	9478	5308 (VII)
Recross	9504	5317 (VII)
Direct	10636	5971 (VIII)
Cross	10698	6000 (VIII)
Direct	10763	6025 (VIII)
Direct	10955	6142 (VIII)
Cross	10956	6142 (VIII)
Redirect	10960	6144 (VIII)
Dugan, Walkerman D.		
Direct	3792	2009 (III)
Cross	3817	2023 (III)
Direct	3822	2026 (III)
Recross	3825	2028 (III)
Redirect	3825	2029 (III)
Easterby, E. D.		
Stipulated...(omitted in printing)	12147	
Eldred, Roger M.		
Direct	6133	3372 (V)
Direct	6497	3597 (V)
Cross	6530	3614 (V)
Redirect	6553	3626 (V)
Recross	6568	3634 (V)
Direct	10275	5762 (VIII)
Cross	10361	5816 (VIII)
Redirect	10387	5833 (VIII)
Epstein, Ralph C.		
Direct	10394	5838 (VIII)
Cross	10515	5898 (VIII)
Redirect	10630	5969 (VIII)
Falck, Alexander D.		
Direct	3182	1675 (III)
Cross	3317	1755 (III)
Redirect	3334	1766 (III)

INDEX OF WITNESSES—Continued

Testimony of—Continued	Orig.	Print (Vol.)
Falck, Alexander D.—Continued		
Direct	9826	5504 (VII)
Cross	9913	5547 (VII)
Direct	9968	5580 (VIII)
Fingold, A. S.		
Direct	4842	2610 (IV)
Cross	4868	2624 (IV)
Redirect	4886	2625 (IV)
Floan, Albert B.		
Direct	4934	2666 (IV)
Cross	4954	2678 (IV)
Redirect	4959	2681 (IV)
Recross	4959	2682 (IV)
Foster, J. M.		
Stipulated...(omitted in printing)	12225	
Gayner, J. M.		
Stipulated...(omitted in printing)	12182	
Geer, Paul L.		
Direct	3502	1868 (III)
Cross	3523	1878 (III)
Redirect	3543	1891 (III)
Recross	3546	1892 (III)
Direct	12054	6776 (IX)
Cross	12056	6777 (IX)
Redirect	12067	6784 (IX)
Recross	12069	6785 (IX)
Green, Victor J.		
Direct	12078	6792 (IX)
Cross	12086	6798 (IX)
Redirect	12096	6805 (IX)
Recross	12101	6808 (IX)
Hall, V. L.		
Direct	11726	6618 (IX)
Cross	11742	6629 (IX)
Redirect	11760	6640 (IX)
Hamilton, J. T.		
Stipulated...(omitted in printing)	12197	
Hanson, Jewell R.		
Direct	9713	5434 (VII)
Cross	9777	5471 (VII)
Redirect	9794	5482 (VII)
Harding, John W.		
Direct	6654	3686 (V)
Cross	6657	3688 (V)
Hartley, Harry D.		
Direct	6666	3694 (V)
Direct	7039	3883 (V)
Cross	7060	3897 (V)
Redirect	7121	3935 (V)

INDEX OF WITNESSES—Continued

Testimony of—Continued	Orig.	Print (Vol.)
Hatch, R. F.		
Direct	5632	3086 (iv)
Cross	5781	3175 (v)
Redirect	5843	3209 (v)
Recross	5850	3214 (v)
Redirect and Recross	5851	3214 (v)
Heuisler, J. S.		
Stipulated...(omitted in printing)	12207	
Herger, H. C.		
Stipulated...(omitted in printing)	12127	
Holmes, Minot Kingman		
Direct	11299	6356 (ix)
Hunter, Alfred R.		
Direct	9512	5322 (vii)
Cross	9568	5299 (vii)
Redirect	9708	5431 (vii)
Kucera, Peter		
Direct	4880	2637 (iv)
Cross	4906	2649 (iv)
Redirect	4931	2665 (iv)
Recross	4932	2665 (iv)
LaFrance, Richard		
Direct	11152	6261 (viii)
Cross	11218	6305 (viii)
Redirect	11224	6308 (viii)
Recross	11227	6310 (viii)
Lamb, R. M.		
Stipulated...(omitted in printing)	12231	
Lang, G. F.		
Stipulated...(omitted in printing)	12167	
Levis, William E.		
Direct	3702	1951 (iii)
Direct	3944	2096 (iii)
Cross	4202	2250 (iii)
Redirect	4215	2257 (iii)
Littler, F. G.		
Direct	11629	6556 (ix)
Cross	11649	6569 (ix)
Redirect	11657	6573 (ix)
Cross	11659	6574 (ix)
Lorens, Edward H.		
Direct	10046	5630 (viii)
Cross	10155	5694 (viii)
Redirect	10167	5702 (viii)
Marble, W. B.		
Stipulated...(omitted in printing)	12189	
Martin, Emmet F.		
Direct	5858	3215 (v)
Cross	5861	3218 (v)
Redirect	5867	3222 (v)

2. Forming Machine 'Trust'. Particularly in the minds of the Owens people there is a picture of a possible combination of all the forming machine interests. Regardless of what Hartford sees in this, it is a possibility and in case it took place the H & T applications would assume a necessary and important place. They would act as an effective club in making the deal probable, and would constitute a guise for making the combination lawful.

That the Owens Company shared this general attitude is indicated by the following excerpt from Mr. Carter's memorandum of July 22, 1924, "In Re Headley and Thompson", (Government Exhibit 296):

> I consider that these applications have a very positive value because of their bearing on other forming machines, [fol. 774] such as those built by Lynch and O'Neill.
>
> * * * * * * *
>
> As forming a possible basis for a considerable degree of control of the forming machine field, therefore, it would seem that these Headley & Thompson applications have a considerable value on the constructive side, in addition to their nuisance value.

The existence of domination in the instant case has been amply shown. The evidence shows that Hartford dominates the glass making machinery business, and through it, the business of manufacturing glassware by the gob feed method, that Hartford, Owens and Lynch dominate the forming machine business, that Hartford and Owens dominate the lehr business, that Owens dominates the glass container business, that Corning dominates the manufacture of heat resisting and other fields of ware in its exclusive field, that Owens, Thatcher and Liberty dominate the milk bottle business, and that Owens, Hazel-Atlas and Ball Brothers dominate the fruit jar business. Moreover, Owens, Hazel-Atlas, Anchor-Hocking, Thatcher and Ball Brothers have admitted the production figures alleged in paragraph 227 of the Complaint, showing that these companies manufactured and distributed 69.55% of all glass containers produced in the United States. Exhibits F, and G-1 through G-5, inclusive, attached to Ex. G.C.A. 5188, show that these [fol. 775] defendants from 1937 through 1939 have manufactured about two-thirds of all glass containers produced in the United States.

Pooling and cross-licensing to build up and maintain this domination are the very essence of the instant case. Beginning with the cross-licensing agreement of June 30, 1916, between Hartford-Fairmont and Empire Machine, and going on down through the 1924 agreement with Owens, the Hartford, Owens and Hazel agreements of July 1, 1932, the Hartford-Lynch agreement of 1933, and the Hartford, Owens and Ball Brothers agreement of March 25, 1933, we have one major contract after another by which the conspiracy was carried out and the domination built up and sustained through the pooling and cross-licensing of patents. There is nothing in the fact that the defendants owned valid patents, which could tend to justify these activities under the circumstances here disclosed.

2. *Acquisition of competing patents*

There is nothing in the patent monopoly which relieves a purchaser of patents from the limitations of the antitrust laws. Indeed, the right to purchase property generally is limited by the antitrust laws. Thus, for example, an attempt, by purchases, to corner the market in cotton has been held to violate those laws. *United States v. Patten*, 226 U. S. 525 (1913). Similarly, the acquisition of one more [fol. 776] cotton compress by a company engaged in assembling many such compresses as a means of eliminating competition, was held to violate the anti-trust laws in *Shawnee Compress Co. v. Anderson*, 209 U. S. 423 (1908). True it is that a patentee may assert his rights against infringers by infringement suits, but as the Supreme Court said through Mr. Justice Clarke in *Motion Picture Patents Co. v. Universal Film Manufacturing Co.*, 243 U. S. 502 (1917) at p. 514, there is a distinction

> * * * between the rights which are given to the inventor by the patent law and which he may assert against all the world through an infringement proceeding, and rights which he may create for himself by private contract, which, however, are subject to the rules of general, as distinguished from those of the patent, law.

Hence, we should expect to find the antitrust laws as effective to prohibit the elimination of competition by the acquisition of competing patents as by the acquisition of competing businesses. And it has been held in this very circuit that a patentee may not prevent or forestall infringement of his patents by means which, in the absence of patents, would violate the antitrust laws.

In the above-quoted passage from *Patterson v. United States,* 222 Fed. 599 (C. C. A. 6, 1915) cert. den. 238 U. S. 635, Judge Cochran asks at p. 646 whether a patentee has the right to prevent the sale of the patented article in any [fol. 777] other way than by suit:

> i. e., by the use of means which would be wrongful if used by him to prevent another from selling articles not covered by his patent—i.e., such means as are charged here * * * This depends solely on whether such a conspiracy is within the first section of the Anti-Trust Act * * * the right to conspire with (p. 647) another or others in his interest in restraint of the interstate trade or commerce covered by his patent is not one of the rights conferred thereby, and such a conspiracy is within the statute * * *
>
> We are therefore clearly of the opinion that the defendants were not entitled to offer evidence that the trade and commerce of the American of Columbus in cash registers was covered by an unexpired patent owned by the National.

It is accordingly submitted that in the instant suit the defendants cannot justify any otherwise illegal acquisitions by showing that they were necessary to protect their patents from infringement.

This applies to many transactions in evidence in this case, including Hartford's acquisition of the Howard patents in 1921, the acquisition in 1925 by Hartford and Owens of the Sears and Lobb applications, and the option on the Headley and Thompson applications, as well as the exercise of the Headley and Thompson option in 1933. It applies to Hartford's acquisition, with the help of Owens, of the W. J. Miller and Tucker, Reeves and Beatty patents in 1925, to Hartford's acquisition of the Nivison-Weiskopf patents [fol. 778] from General Glass in 1932, to the acquisition in 1933 from O'Neill of gob feed and former rights by Hartford and of suction patent rights by Owens, to the acquisition by Hartford and Owens through Lynch of the Ed Miller patent rights in 1933, to the acquisition of the Nagle lehr by Hartford in 1937, and to the acquisition by Ball Brothers of the patents of Schram Mfg. Co., Pine Glass Co. and Three Rivers Glass Co. in 1925, 1929 and 1936, respectively. Some idea of the extensiveness of Hartford's activities in buying up the patents of "outsiders" may be obtained from Government Exhibit 973 which shows that in 1940 Hartford owned 208 unexpired patents and 49 expired patents, which it had acquired from others than employees of the Hartford-Empire or Hartford-Fairmont Companies.

3. *Imposition of restrictive license provisions*

Most of what has been said above to show that defendants' ownership of valid patents cannot justify combinations in restraint of trade, or the pooling of patents, exchange of licenses or acquisition of competing patents as part of a general conspiracy in restraint of trade applies equally to render the question of patent validity irrelevant in connection with the imposition of restrictive license provisions. The authorities indicating the invalidity of such [fol. 779] restrictive provisions when imposed as a part of the general conspiracy in the instant case are cited and discussed at pp. 52-72 of the *Plaintiff's Trial Brief* dated June 8, 1940, heretofore filed in this suit. An examination of that discussion in connection with what has already been said in this memorandum, will disclose that such provisions are invalidated by the antitrust laws when they transcend what is "necessary to protect the use of the patent", when they do not reasonably fall "within the reward which the patentee by the grant of the patent is entitled to secure", or when they are used as means to effect a monopoly or impose unreasonable restraints on interstate commerce. The fact that the restrictions are imposed as conditions to the granting of licenses under valid patents has no tendency to justify their imposition if they transcend what was necessary to protect the patent, do not fall within the reward which the patentee is entitled to secure or are used as means to effect a monopoly or an unreasonable restraint of trade. Hence, the question of their validity is irrelevant and inadmissible.

[fol. 780] c. *Proof of the validity of the patents would be no legal justification of the united exercise, to restrain competition, of the lawful individual monopolies granted by the patent statutes.*

Once many patents have been acquired by a single concern or by a combination, as in the instant case, do the patent laws justify their united use in restraint of competition? In discussing this question with counsel for Hartford, Mr. Lloyd T. Williams, as counsel for Owens, gave voice to this prophetic utterance in 1924:

> At least a strong argument can be made that the aggregation of competing patent rights is as much prohibited by the Antitrust Laws as the aggregation of competing factories. (Government Exhibit 73)

As if to fulfill this prophecy, the Supreme Court, through Mr. Justice Brandeis, speaking of a combination between different patent holders, said in 1931 in *Standard Oil Co.* v. *United States*, 283 U. S. 163, at p. 174:

> The lawful individual monopolies granted by the patent statutes cannot be unitedly exercised to restrain competition.

That Mr. Williams correctly drew his conclusion in this regard from the earlier cases of *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20 (1912), *United States* v. *New Departure Mfg. Co.*, 204 Fed. 107 (W. D. N. Y. 1913) and *United States* v. *Motion Picture Patents Co.*, 225 Fed. 800 [fol. 781] (E. D. Pa. 1915), app. dism. on stip. 247 U. S. 524, is shown by the fact that the Supreme Court cited all three of these cases in support of the last quoted statement from its opinion in *Standard Oil Co.* v. *United States*.

In *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423 (1908), where two associated companies controlled by railroads acquired and operated forty odd cotton compresses, the Court concluded at p. 433 that the object of assembling so many compresses in one ownership or management was obviously to cause a cessation of competition. The case was held to present acts in aid of a scheme of monopoly. What was true of cotton compresses in that case must be equally true of patents in the instant case.

> Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights, an universal license against positive prohibitions,

said Mr. Justice McKenna at p. 49 of the *Standard Sanitary* case, supra, and continued:

> The Sherman law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.

Exhibit 973 shows that the defendant Hartford on August 20, 1940, owned 727 unexpired patents, and Exhibit 1597 shows that on December 12, 1939, defendant Owens-Illinois owned 580 patents, excluding those relating to fibre-[fol. 782] glas. Paragraph 5 of the Affidavit of John W. Carnahan and Exhibit E attached thereto (filed by Hazel-Atlas in connection with Plaintiff's Motion to Impound), show that Hazel-Atlas had 73 patents, which went into the pool. The means by which these aggregations of patents have been "unitedly exercised to restrain competition" forms the subject of a great portion of the plaintiff's evidence and requires no elaboration here.

II. *No evidence is admissible to show the validity of patents in rebuttal of the Government's position, since the Government has not questioned their validity.*

It may be contended that the defendants are entitled to show the validity of their patents in rebuttal of assertions as to their invalidity. Regardless of what conclusion as to validity may be drawn by Government counsel from a perusal of pertinent evidence, the Government has never put such validity in issue in this case, and submits that to do so would be improper, because irrelevant to the issues upon which the complaint is based.

A. *Validity of the patents has not been questioned in connection with the "Clarke Article".*

It cannot be rightly contended that in offering evidence concerning the so-called "Clarke Article" the Government has questioned the validity of any patents.
[fol. 783] When Judge Haight first objected to the introduction of such evidence, Mr. Isseks opened his argument in favor of admissibility with the statement at Tr. 581,

> Your Honor, we are not here making any attack upon any patent.

Later, at Tr. 583-584, the following colloquy occurred:

> The Court: I will say to counsel that I am not interested at all in the Clark article with reference to any influence that it may or may not have had in the Patent Office on the issuing of the patent. If that Clark article, if counsel maintains and is prepared to show that this Clark incident has

some bearing on the manoeuvering that was participated in, or claimed to be participated in, prior to the merger or agreement between Hazel-Atlas and Hartford-Empire and the Owens Company, then he may show it for that purpose.

Mr. Isseks: That is the only purpose we want it for. We are not trying to show the patent is invalid.

The Court: I am not interested.—I will repeat to counsel,—in any effect, claimed or otherwise, that this Clark article may have had upon the Patent Office and the subsequent action in issuing the patent. I am interested only if counsel is prepared to show any effect that it had, or any part that it played, in the efforts toward and the merger of these two concerns.

Mr. Isseks: The purpose we offer is to show it was part of a plan to gain control of all the licensees they now have. This witness testified the first day——

The Court: If that is the purpose, I will overrule the objection, to the reference to the Clark matter, on the assumption that you limit it to that purpose.

[fol. 784] Mr. Isseks: That is all it is offered for, Your Honor.

Near the bottom of Tr. 584, Mr. Isseks repeated:

I would like to adopt your Honor's suggestion. We are going to offer it solely to show the manoeuvering of Hartford and Owens.

The Court replied:

Limit it to that purpose only.

Hence the Clark Article can furnish no basis for going into the question of validity at the present time.

B. *Validity of the patents has not been questioned in connection with the evidence as to infringement suits and espionage.*

1. *Infringement suits*

Much evidence has been introduced to show the bringing and threatening of infringement suits by the defendants; and in numerous instances, it has been shown that such suits or threats resulted in the sale of patent rights or taking of licenses before the validity of the patents involved could be actually adjudicated. The introduction of such evidence, however, does not imply any contention by the Government that the patents involved were invalid. The Government simply takes the position that whether such patents were valid or invalid, the concerted threatening and bringing of suits as a means to effect monopolies and unreasonable restraints of interstate commerce was illegal.

[fol. 785] It is true that in the *Patterson Case, supra,* at p. 648, the Court permitted defendants to show the validity of certain patents to meet "the claim that these infringement suits were brought *in bad faith*" (italics supplied), while at the same time excluding such evidence where there was no such charge. In no place in the complaint in the instant case have the defendants been charged with bad faith in the threatening or bringing of infringement suits. The Government has at no time sought to show that the defendants have threatened or brought infringement suits without a sincere belief in the validity of the patents to be sued upon or in the fact of infringement. Rather has it taken the position that the threats and suits, because used as means to effect illegal monopolies and restraints, were illegal even if the patents were valid and infringement had occurred. Hence the validity of the patents has not been questioned and evidence to support them is inadmissible in this suit.

2. *Espionage*

Similar considerations apply to the evidence of industrial espionage. Such tactics were undoubtedly a means of applying pressure to persuade non-licensees to take licenses and a means of obtaining information for the prosecution of infringement suits; but in proving espionage, the Gov- [fol. 786] ernment has not undertaken to show that the patents in question were invalid or that no infringement in fact occurred. All the Government needs to show is that certain patents (whether valid or not) were used by defendants as a means of applying pressure on non-licensees to join the combination in restraint of trade which had been set up by the *improper* pooling of patents, exchange of licenses, acquisition of competing patents, imposition of restrictions and united exercise of great aggregations of patents. It will hardly be contended that a showing that defendants owned valid patents could have been successfully pleaded as a defense to a civil action of trespass *quare clausum fregit* or a criminal prosecution for breaking and entering arising out of these espionage tactics. On like principles, such ownership is no defense to the employment of such tactics as a means to effect monopolies and combinations in restraint of interstate commerce.

C. *Validity of the patents has not been questioned in connection with evidence of refusals to grant licenses.*

In alleging and showing that defendants have frequently refused to grant licenses under their patents, the Government is not asserting that those patents were invalid. It takes the position that, assuming the validity of such patents, the defendants cannot legally use them to effectuate a monopoly and combination in restraint of interstate com- [fol. 787] merce similar to that which is disclosed by the evidence. Having *improperly* pooled their patents, exchanged licenses, and acquired competing patents to build up a great illegal aggregation of patents, they cannot unitedly exercise those patents to restrain competition by excluding others from the field. The support of this position is in nowise dependent upon proof of the invalidity of the patents.

III. *No evidence is admissible to show the validity of the patents as bearing on the good intentions of the defendants.*

Defendants cannot successfully contend that evidence as to the validity of their patents is admissible to show the good intent or motive which actuated the conduct complained of by the Government. In the first place, the fact as to validity of the patents has no tendency to prove whether or not the defendants *believed* them to be valid; and in the second place, proof of a proper intent or motive by the defendants in the use of their patents, as shown in this case. would be no defense.

A. *Proof of the validity of the patents would have no probative value in establishing the state of mind of the defendants.*

Herbert Knox Smith, on page 17 of Exhibit 388, said:

Nothing is more plain from an actual seventeen years' experience than the uncertainty as to the future practical value of a given patent claim. * * *

[fol. 788] This shows how uncertain the future is as to patent claims and how unsafe it is to take a particular claim and assume it will be the one which three, five or ten years later we shall be glad to rely upon in court.

It is axiomatic that a patent is commercially of little value until its validity has been litigated in the courts. Once the question of validity has been passed on by a trial court, its decision may well be upset on appeal. A trial court of a different circuit may come to a different conclusion from that of the Circuit Court of Appeals which first passed on the question and may in turn be upheld by its Circuit Court of Appeals. The validity of a patent cannot be said to have been finally and conclusively established until either the Circuit Courts of all circuits have passed upon it without disagreement or the Supreme Court has passed upon it, after granting *certiorari* to resolve a conflict. Hence the fact (if it be a fact) that defendants could now convince the Court that their patents are valid, would have no bearing one way or another upon their *belief* as to that validity at the time they perpetrated the acts complained of by the Government in this suit. The uncertainties in establishing the question of validity are so great that no such belief can logically be inferred from subsequent proof of the fact.

[fol. 789] B. *The good intentions which may have motivated the defendants in the use of their patents in pursuance of a larger plan to control interstate markets are irrelevant.*

The immateriality of good motives as a defense to an antitrust suit where restraints of trade have been shown is emphasized in numerous cases. Speaking of the prohibitions of the Sherman Act, the Supreme Court in *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20 (1912) said through Mr. Justice McKenna at p. 49:

> Nor can they be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results.

The same principle was thus expressed by Judge Dickinson in *United States v. Motion Picture Patents Co.*, 225 Fed. 800 (E. D. Pa. 1915) at p. 808:

> If, in the judgment of the law, a contract or cooperating agreement is such as to work an undue and unreasonable restraint of trade, and through such restraint to monopolize trade or any part of it, the judgment is one of condemnation, no matter how innocent or otherwise praiseworthy the motives of those who had part in it.

In *United States v. Trans-Missouri Freight Association*, 166 U. S. 290 (1897), Mr. Justice Peckham, speaking for the Court, said at pp. 341 and 342:

> Although the case is heard on bill and answer, thus making it necessary to assume the truth of the allegations in [fol. 790] the answer which are well pleaded, yet the legal effect of the agreement itself cannot be altered by the answer, nor can its violation of law be made valid by allegations of good intention * * * The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it.

In *United States v. Reading Co.*, 226 U. S. 324 (1912) the Supreme Court again said, speaking through Mr. Justice Lurton at p. 370:

> Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence.

In *O'Halloran v. American Sea Green Slate Co.*, 207 Fed. 187 (N. D. N. Y. 1913) rev'd on other grounds at 229 Fed. 77 (C. C. A. 2, 1915), Judge Ray said at p. 189:

> I acquit the defendants of any willful purpose or conscious design to violate this act; but this is no defense, if the agreements made and their execution necessarily operate to unduly and unreasonably restrain trade or commerce among the several states. See Addyston Pipe Case, 175 U. S. 211, 214, 234, 20 Sup. Ct. 96, 44 L. Ed. 136; Northern Securities Co. v. United States, 193 U. S. 197, 331, 24 Sup. Ct. 436, 48 L. Ed. 679.

Again, in *International Organization, United Mine Workers of America v. Red Jacket Consolidated C. & C. Co.*, 18

F. (2d) 839 (C. C. A. 4, 1927) cert. den. 275 U. S. 536, Judge Parker said at pp. 845-846:

> A conspiracy is in violation of the statute, where there exists an intent to restrain interstate trade and commerce and a scheme appropriate for that purpose, even though it [fol. 791] does not act directly upon the instrumentalities of commerce. * * * And where the necessary result of the things done pursuant to or contemplated by the conspiracy is to restrain trade between the states, the intent is presumed. United States v. Reading Co., supra, at page 370. Defendants must be held "to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produced the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result." U. S. v. Patten, 226 U. S. 525, 543, 33 S. Ct. 141, 145 (57 L. Ed. 333, 44 L. R. A. (N. S.) 325; Addyston Pipe & Steel Co v. United States, 175 U. S. 211, 243, 20 S. Ct. 96, 44 L. Ed. 136.

The passage above-quoted by Judge Parker from the opinion of the Supreme Court in *United States v. Patten* clearly brings out the distinction that renders inadmissible evidence of any good intentions which may have motivated the defendants in the use of their patents, despite the fact that evidence of their *wrongful* intentions is admissible to show their connection with the conspiracy. The Supreme Court said in the *Patten* case at p. 543 that "by *purposely* engaging in a conspiracy" (italics supplied) which produced the result the statute is designed to prevent, defendants are chargeable with intending that result "and cannot be heard to say the contrary." To show *the conspiracy* and the *purpose* to engage in it, of course intent is material, since it is only necessary, to constitute a conspiracy under the Sherman Act, that the minds of two or more persons have met to effect the unlawful purpose, or to effect a law- [fol. 792] ful purpose by unlawful means. *United States v. American Column & Lumber Co.*, 263 Fed. 147, 151 (W. D. Tenn. 1930) aff'd. 257 U. S. 377. But the use of the patents in the instant case, as shown above under Point I, is only the means by which the unlawful result was achieved. The defendants may have acted in good faith, with the intention of asserting valid patent rights, but since such acts resulted in illegal monopolies and combinations in restraint of interstate trade, (to quote again from Mr. Justice Van Devanter in *United States v. Patten*, at p. 543):

> the conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary.

Hence it is submitted that while intent is material on the question of the meeting of the minds to form a conspiracy, the good faith with which the defendants exerted their patent rights in the course of effectuating that conspiracy is irrelevant and evidence to support it is inadmissible.

The irrelevancy of the intent with which patent rights are exercised in pursuance of a larger plan to control interstate markets is well illustrated by the following language from the opinion of Judge Haney in *Lynch v. Magnavox Co.*, 94 F. 2d 883 (C. C. A. 9, 1938) at p. 890:

> Appellees rely strongly on Standard Oil Co. v. United States, 283 U. S. 163, 51 S. Ct. 421, 75 L. Ed. 926. There a patent pool and cross-licensing agreement was executed. There was no conspiracy to monopolize, other than that which might arise from the agreement itself. That agreement had neither an express or implied purpose to monopo- [fol. 793] lize all the gasoline manufactured, was not used to that end, and there were no acts from which the unlawful purpose could be inferred. It was there said, that "any agreement between competitors may be illegal if part of a larger plan to control interstate markets," and that the "limited monopolies granted to patent owners do not exempt them from the prohibitions of the Sherman Act and supplementary legislation." Page 169 of 283 U. S. 51, S. Ct. 421, 423, 75 L. Ed. 926.

C. *Proof of validity or invalidity of patents would leave no tendency to rebut evidence offered by the plaintiff to show that patents were acquired as part of a conspiracy in violation of the antitrust laws.*

Defendants may contend that they may show that certain inventions infringed their patents in order to rebut evidence tending to show that they acquired those inventions for the purpose of restraining interstate commerce or creating an unlawful monopoly. This they cannot do, however, since the fact of such infringement has no tendency to rebut an expressed purpose of restraining competition or creating a monopoly. Such purpose can co-exist with a purpose to prevent infringement. It may be even more effectively pursued by the assertion of valid patent rights against infringing devices than by the assertion of doubtful rights against devices which do not actually infringe. Plaintiff relies on the position that the acquisition of infringing devices as part of a larger scheme of monopoly is illegal, as indicated under points I-A, I-B2 and III-B above, and does not contend that the defendants threatened or brought infringement suits without believing that their patents were infringed. Hence, it is unnecessary and irrelevant for defend- [fol. 794] ants to show that their patents were infringed by the inventions which they acquired; and such a showing would not tend to rebut evidence that such inventions were acquired to effectuate illegal restraints and monopolies.

IV. *This court has already ruled that it will not go into the merits of patent controversies.*

Already, the question as to the admissibility of evidence to prove the merits of a patent controversy has been raised in this case, and the Court has refused to receive evidence for this purpose. This is manifest from the following excerpt from pp. 5537-5538 of the Transcript:

Government's Exhibit 1512 is read by Mr. Kramer.

Q. You wrote that, did you not?
A. Yes, I did.

Mr. Wood: If your Honor please, I would like to move that all of the reference in the letter to the Lott application in connection with Interference 39376 be stricken from the exhibit unless we are going into the retrial of that Interference, because Lott won that Interference and these are just remarks of opposing counsel which you might expect are derogatory to opponent's case.

Mr. Isseks: We are offering it only to show the history of the relationship between various parties who finally got together.

[fol. 795] The Court: If it is offered for that purpose only, you may proceed for that purpose.

Mr. Wood: Might this portion be stricken out, nevertheless?

Mr. Isseks: We object.

The Court: I don't see how you can strike a line here and a line there from these communications. I will simply say to counsel, that the Court is not receiving these offerings for the purpose of establishing any controversy on one side of the controversy in a patent quarrel.

Mr. Wood: It is understood we are not retrying the interference?

The Court: It is received only for the purpose of establishing the relationship between these companies in that period.

It is submitted that in view of the principles set forth under the preceding points in this memorandum, the Court was clearly right in refusing to receive evidence to establish the contentions of either side in a patent controversy, and that the previous ruling should be adhered to at this time.

Conclusion

For the foregoing reasons, it is submitted that the proposed evidence should be excluded.

Respectfully submitted, (S.) Lawrence S. Apsey.

October —, 1941.

Samuel S. Isseks, Lawrence S. Apsey, Special Assistants to the Attorney General; Victor H. Kramer, Seymour D. Lewis, Special Attorneys.

[fols. 796-797] [File endorsement omitted]

In United States District Court

[Title omitted]

Order on Admissibility of Certain Exhibits—Filed March 16, 1942

This day came the parties by their attorneys and the Court, having considered written argument of counsel on the motion of the United States of America to broaden the purposes for which certain exhibits originally admitted for limited purpose have been received in evidence, sustains the motion (transcript, pp. 5902-5904) of the United States of America, to admit:

(a) Exhibits 25, 31, 32, 42, 44, 314, 388, 395, 406, 408, 902 and 959 as evidence of the truth of statements of fact therein made as of the declarant's own knowledge;

(b) Exhibits 114, 276, 286, 382 and 672 as evidence of the truth of facts therein stated as of the author's own knowledge and as evidence of the truth of quotations therein by the author of declarations of co-conspirators made in furtherance of the conspiracy;

(c) Exhibits 275 and 701 as evidence of the truth of quotations of third parties set forth therein; such statements being subsequently confirmed in oral testimony by said third parties;

(d) Exhibit 269, as evidence of the truth of the facts stated, made of the personal knowledge of the author or on information given to him at the conference and confirmed in oral testimony, and of the quotations of co-conspirators made in furtherance of the conspiracy and subsequently confirmed in oral testimony.

March 16, 1942.

(S.) Frank L. Kloeb, U. S. District Judge.

[fols. 798-799] IN UNITED STATES DISTRICT COURT

Transcript of Pre-trial Proceedings

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[fol. 800] The Court: I am quite anxious to know what, if anything, has developed since the submission of the summary of practices complained of by the government to the defendants. I have received copies of two letters that were written by counsel for Hartford and counsel for Owens, in which certain statements were made as to the practices complained of, and especially the relief that was asked; also requesting an interview with counsel for the government. What has occurred?

Mr. Wall: If Your Honor please, I assume you have also had Mr. Isseks' reply to the letters which were sent to him by Owens and by Hartford?

The Court: I have had no reply.

Mr. Wall: The letter was sufficient in our case to clear up a point which was mentioned in the letter to government counsel. There has been handed to me a copy of the letter which went from government counsel to Mr. Middleton. The first paragraph of the letter is all I need to read at present:

> "Referring to your letter of September 16th, the phrase 'practices complained of' in item '(12)' under 'relief requested' on Page 4 of the 'Summary of Practices of Defendants and Relief Requested' obviously refers to the 'practices complained of' under the heading 'Hartford-Empire Company.' "—

in other words linking the general expression of dissatisfaction to the specific things which had been listed in the letter.

The Court: Does that mean it refers to the prior enumerations of practices complained of in the particular document?

Mr. Wall: So I understand. I understand it was said it [fol. 801] was obvious, although it was not, to me. I think it is unnecessary to call attention to the importance of this statement and to the specific itemization of things we are to meet and are to correct, if possible, without a trial. This statement requires no comment, except in specific instances or paragraphs which I will mention as we go through the statement, in order to show Your Honor what solution is possible for the issues in the case.

In general now we have a statement of current acts and practices which it is desired to have discontinued, as separate from a mere narration and history of matters in controversy. It seems to me it may be summarized as follows:—the complaints as to the things now being done are in these respects, so far as Hartford is concerned:

The restrictive licensing system is alleged to be wrong *per se*. That is in several paragraphs. Various phases of that system are touched upon.

Exclusive rights granted by Hartford to machines or under patents are attacked.

Alleged tying clauses in the licenses are referred to: one between the glass feeder and the forming machines; and the other tie—if I may call it that—which was in the contract between Hartford and Lynch.

Next the question of refusals to applicants.

Then there are the allegations of monopoly in certain fields of glass and glassware; heat-resisting ware—and this statement adds to heat resisting ware fields of bulbs, tubing and cane, which, if that was in the complaint at all, was obscure and certainly did not stand out.

[fol. 802] Next an alleged monopoly as to the container field, the same as to the milk bottle field and as to fruit jars: all of them alleged to have been accomplished by the granting of exclusive rights, and the restrictions which are imposed by Hartford's general licensing system.

Also the alleged stabilization of prices by means of these same restrictions and exclusive rights.

And refusals to license new applicants for the license of machinery.

That I think correctly states what the essence of the complaint is now.

Now that we have a statement of the things upon which preventive relief would operate, we think that a reasonable and practical solution of all those matters is possible. As we stated before we do not care to litigate to establish or vindicate legal principles as such. This is purely a practical matter. While believing that our course of conduct has been legal in the past, and believing that we have been within our rights, we are willing, in case a settlement can be reached, to do many things which we feel the court would not compel us to do upon a trial of all of the issues.

I start with that premise, that there might be a complete disposition of all the issues, as a basis for what I am about to say in reviewing the statement furnished us by government counsel.

Some of the things, of course, which are in the statement Hartford cannot answer for: things such as the contract between the Hamilton Company and one of the defendants, which we have nothing to do with; and so far as our state- [fol. 803] ments relate to them, they are based upon what we hope and expect may be done.

The first complaint in this statement furnished us, and under the heading: "Hartford-Empire Company Practices Complained of" is this:

"(1) Hartford limits the type, or kind of glassware which can be produced by each of its licensed glass manufacturers. Each licensee is authorized to use the machinery in the production of certain types or kinds of glass containers and each is specifically excluded from using such machinery in the production of other types or kinds of glassware."

That is the question of fields of ware by classification of the product. We propose, on the supposition that I have just mentioned, to eliminate all such restrictions to the extent to which Hartford is able to go. I think as to the matter of exclusive rights I will pass that for the moment because that comes up under some of the later specifications. But so far as the restrictions are concerned, we can and we would remove all of them.

"(2) Hartford limits the use of the product manufactured by certain glass container manufacturers."

That, again, is a question of fields of ware by classification of the glass products, and the same answer applies to that. I think that can be wholly taken care of.

"(3) Hartford limits the character of the glassware that may be manufactured by certain glass container manufacturers as to (a) weight, (b) color, (c) capacity, and (d) composition."

Each one of those restrictions would fall with the wiping [fol. 804] out of the restrictions, as I suggested.

"(4) Hartford limits the quantity which may be manufactured by certain glass container manufacturers."

We would be willing to eliminate all quantity restrictions.

"(5) Hartford limits the market in which certain glass container manufacturers may distribute their products."

The one or two instances of such restrictions would fall with the removal of the others.

"(6) Hartford grants certain manufacturers the exclusive right to use its machinery in the manufacture of specific products."

That of course is not quite accurate. It should be that Hartford, many, many years ago, did grant exclusive rights, which Hartford by itself cannot retake. But I assume the complaint to be directed at the continued existence of these exclusives.

As to Corning, the Corning exclusives are detailed both in this statement and the pleadings; and I would prefer that a statement come from counsel for Corning, Mr. O'Brien.

In the case of Ball, who hold some exclusive rights, we would be hopeful and expect arrangements could be made for the relinquishment of those rights, so that fruit jar rights would flow to each licensee of Hartford.

There is one small exclusive in thermos bottles, which I cannot answer for definitely now. Possibly it could be eliminated. At any rate it is not important.

The only other exclusive of any character at all I know of—if I am wrong it may be pointed out—is the exclusive [fol. 805] right of Thatcher Company to an obsolete type of milk bottle forming machine, designed some twenty-four or twenty-five years ago, used only by that company, and is not necessary for milk bottle manufacture at all.

Next:

"(7) Hartford requires its licensees to agree not to contest the validity of its patents."

I think that is based upon a misconception of what the provision is. It being very short, if I may read it to Your Honor, I shall. I will read from the forming machine lease section 15. (Reads section.) In the next section is a limiting provision so that the licensee has the benefit of any adjudication of invalidity. That is plainly nothing more than the law provides. It is the same rule that would apply if there were no contract.

That form has been in use at least eight years. There may be some old license forms outstanding which have a different provision or different wording on that subject. If there are, and if there is any significant difference, we are willing to waive those provisions so far as they exist, and accept the current, and, we think, entirely proper provision, which has been in use for years.

"(8) Hartford requires its licensees to agree that improvements on the licensed machinery shall be the property of the licensor without any compensation to the licensee."

That is substantially a correct statement of the provision which has been in the lease and in the lease forms,—improvements on the licensed machinery. We are willing to [fol. 806] eliminate that and take instead a mere non-exclusive, divisible and transferable license to those improvements made upon our machinery; so that each licensee of our machinery may be in the same position as all the others.

"(9) Hartford limits the number of glass feeding machines that may be used by its licensees."

There are very few instances, if any, where there is an express limitation; but there are many cases where there is no existing present right to take more machines. It has been handled as a matter of a new transaction, separate transaction throughout. We are willing on the conditions mentioned to confer upon the licensee the right to take such additional number of our machines as may be needed for their business.

"(10) Hartford limits the use of its forming machines to use with Hartford feeders."

This is not quite accurate. There is a provision that if a certain forming machine is not used with the feeder, Hartford may terminate the license. It has never done that. That has been done under patents covering the combination of the two machines. But we make no point of that, and are willing to eliminate that.

While on (10) I note nowhere under practices complained of against Hartford is there any statement that Hartford has any other tying clauses in its contracts; but Paragraph 10 of the relief requested is:

"(10) The cancellation of all tying clauses contained in the Hartford standard feeder, former, conveyor, stacker, and lehr licenses;"—

[fol. 807] There are not any. There are not any tying clauses, so-called, under consideration here, as feeder, former, &c., according to the present state of my information. I cannot state whether there were or not. If there were any such tying clauses in contracts—and as to that I can not say to the court what the fact may be,—we are willing to eliminate them too. But we have none in current use.

"(11) Hartford refuses to permit the existing glass container manufacturers to extend their production into other lines of glassware."

That, again, is a question of fields of ware and the objection would be met by a removal of the restrictions.

"(12) Hartford refuses to license persons and corporations desiring to enter the glassware industry."

On that point I might call attention to No. 25 which is that:

"(25) Hartford refuses to license persons desiring to enter the glass container industry unless and until Owens approves."

Neither of those statements is correct. But neither of them presents any issue which need be tried, and which cannot be disposed of very shortly and quickly. Hartford is willing to grant licenses and leases of machinery, as it is now doing, to all persons who, with regard to their financial and kindred considerations, can reasonably be expected to remain in the glass business a substantial length of time. We are willing to give such assurances as may be proper that that policy will be followed. That will take care of both of these points: (12) and (25). That has been our policy for some time.

[fol. 808] "(13) By reason of its agreements, including certain cross-licensing agreements, with Owens, Hazel-Atlas, Anchor Hocking, Thatcher, and Ball Brothers, and by reason of its license restrictions, Hartford has given and is now giving Owens, Hazel-Atlas, Anchor Hocking, Thatcher, and Ball Brothers a virtual monopoly in connection with the entire glass container field."

That is little more than argument. It is incorrect. We have some forty-five licensees, most of them in the glass container field. But the removal of restrictions and such change as may be made in exclusive rights will certainly take care of that, in conjunction also with the policy of licensing new applicants.

"(14) By reason of its agreements with defendants Thatcher, Owens, and Liberty, and its license restrictions, Hartford has given and is now giving a virtual monopoly in the manufacture of milk bottles to Thatcher, Owens and Liberty."

The same answer applies to (14) as to (13).

(14a) and (15) are duplicates,—apparently some typographical error. Reading 15:

"(15) By reason of its agreements with Ball Brothers Hazel-Atlas, and Owens, and its license restrictions, Hartford has given and is now giving a virtual monopoly in the manufacture of fruit jars to defendants Ball Brothers, Hazel-Atlas, and Owens."

As I stated to Your Honor, we feel confident that semi-exclusive right of Ball can be removed in case of a disposition of the case.

[fol. 809] "(16) Hartford refuses to permit Corning to manufacture glass containers."

The removal of restrictions answer that entirely.

"(17) By reason of its 1916 and 1922 agreements, including cross-license provisions, with defendants Corning and Empire Machine, and its license restrictions, Hartford has given and is now giving Corning a monopoly in the manufacture of heat resisting ware, bulbs, tubing and cane, signal and optical ware, laboratory ware, and various other types of non-container ware."

I believe I shall leave the statement as to those exclusives to counsel for the company affected.

"(18) Since 1916, Hartford has followed a consistent policy of acquiring ownership and control of all patents on glass making machinery; it has also since 1916 followed the consistent policy of acquiring or bringing under its control all manufacturers of glass making machinery with the result that Hartford today controls the entire supply of new machinery for the glass container industry."

That is merely repetition of the charge based upon past events and in no sense a continuing or existing act or practice which we would change or which could be controlled by injunction. The patents which we have got were acquired to avoid litigation in the Patent Office, the Courts, and to insure our licensees the most efficient machinery we could give them. But how can there be any possible complaint, [fol. 810] any current complaint or future relief required if the policy of open licensing, the removal of restrictions, and the admission of all responsible newcomers who meet suitable requirements, is provided for?

"(19) The continued existence of Hartford in its present form makes impossible competition in the development and distribution of glass making machinery as well as in the manufacture and sale of glass containers."

That, again, of course is mere argument as to the extent of the relief desired, and not a current practice which could be controlled; nor does the subject become important in view of the other changes which it has been suggested can be made.

"(20) Hartford and Owens control and dominate virtually all patents on glass container making machinery."

This gives the impression as it is read there that there is a sort of partnership here, a joint control of a lot of patents. It is not a fact that they control, either singly or together, all patents on the glass container making machinery and it is not a fact that they control any jointly. So far as we are concerned, we have stated the use which we will make of our patents, the licensing policy which we will follow, and the admission of responsible newcomers to the field; and it seems to me that that takes care of point 20.

"(21) Hartford and Owens are responsible for the elimination of all independent manufacturers of glass container making machinery."

That, again, is a mere recital of charges of past events as [fol. 811] to them. The fact is that we have eliminated infringers, which of course is the essence of a patent franchise. That calls for no current or future relief.

"(22) Hartford, by reason of its 1933 cross-licensing agreement with defendant Lynch, containing tying clauses which either restrict the use of Lynch forming machines to use with Hartford feeders, or require the payment of royalties to Hartford in the event other feeders are used with the Lynch formers, controls the manufacture of forming machines in this country."

That refers, Your Honor, to one type of forming machine, and to the provision covering it in the contract between Hartford and Lynch; and in the disposition of this case we are confident that can be eliminated entirely so that no question will arise.

"(23) Hartford, by reason of its 1924, 1932 and 1935 agreements, including cross-license provisions, with Owens, has given Owens a preferential competitive position over all other licensees of Hartford (other than Hazel-Atlas) in connection with the manufacture of glass containers."

The pleadings themselves show that the 1924 and 1932 contracts have been cancelled and eliminated. That is the fact, as is well known to all of us. As to the 1935 contract between Hartford and Owens, the 1935 arrangement is merely a cross-licensing arrangement, non-exclusive. What there may be about that the government objects to is not specified here, and we are at a loss to know in what respect it is considered objectionable. So far as we know, it is en-[fol. 812] tirely proper and legal.

"(24) Hartford, by reason of its 1932 agreement with Hazel-Atlas, including cross-license provisions, has given and is now giving Hazel-Atlas a preferential competitive position over all other licensees of Hartford (other than Owens) in connection with the manufacture of glass containers."

We would be hopeful and would expect, Your Honor, that the Hazel-Atlas matter could be properly adjusted in the court's disposition of the entire case; and on that it would be better that their counsel be heard along with us.

"(25) Hartford refuses to license persons desiring to enter the glass container industry unless and until Owens approves."

We have covered (25) along with (12), the matter of licensing new applicants.

"(26) By reason of the imposition by Hartford of the restrictions in the license agreements, and by reason of the imposition of substantial royalties, Hartford has stabilized or in effect fixed prices of glass containers with the result that artificially high, rigid and non-competitive prices are being maintained in the glass container industry."

The first answer, but not the answer which disposes of that here, is that the charge has nothing to it; it is not a fact. The second is that this charge rests upon the allegation that exclusive rights and restrictions have been used for that purpose. With the change of exclusives, and the [fol. 813] entire removal of restrictions, there will be no substance to the charge anyway.

"(27) Hartford, by reason of its dominant position as the only licensor of automatic glass making machinery, has enforced a system of price leadership in the glassware industry."

The same comment applies to that as to (26). I did not mention in regard to (26) that not only are we covering the subject of removal of restrictions and exclusives, and licensing new applicants, but also giving them additional machines as needed to licensees.

"(28) Hartford, by reason of substantial initial license fees and high royalty rates, has discouraged newcomers from entering the glass container industry."

That is curiously inconsistent with the charge that we have maintained such excessive and artificially high prices for glassware that the various producers in the industry now are making exorbitant profits, which the government wants to curtail. If that is true it would merely tempt the newcomers to come in, of course; but I don't see anything in that that we can say to Your Honor, except no question is presented which requires relief. The court cannot very well exercise a rate-making power upon royalties. It cannot determine what a proper licenes fee for machines should be. I may say here, if we get into that subject, it would appear that the license fees yield no profit; in some cases we have a loss when we put out machines at the present rate of license fees. But (28) at any rate has no substance when all newcomers meeting reasonable requirements, which might be discussed and which we will set up, are entitled [fol. 814] to licenses, and, having gotten a license, they can get the machines they need to make anything they want, without restriction. They are certainly no worse off than these other producers whom the government says are making too much money. So they are not being discouraged from coming in.

The Court: There is no claim of discrimination?

Mr. Wall: I don't see any. There will probably be this exception, that claim made in connection with Hazel-Atlas; but, broadly, no, there is no claim of discrimination, and there will be none.

I prefer to take the practices complained of rather than the relief requested as a basis for discussion, because the practices complained of come closer to being a statement of existing facts. I think only a brief reference to the relief requested is necessary.

It is a little vague:

"(1) The cancellation of all agreements between Hartford and all of its licensees so as to terminate each and every restriction in each license agreement;"

Of course that is not necessary at all. It is probably intended to be aimed at restrictions under practices complained of, particularly in view of the letter I read part of to Your Honor which I received from government counsel. Just briefly, these things that we have mentioned which we either have it in our power to do or think and believe can be done, upon a disposition of the case, by negotiations between ourselves and the other defendants, I think would take care of every reasonable objection or complaint that the government can make to any existing practices or contractual arrangements of Hartford. They effectively [fol. 815] remove the practical obstacles which the government claims exist to competition in the industry. They go so far that I don't see how it is possible for us to go any farther. I think they meet in substance every substantial issue which there is in the case.

May I repeat that this is not done by us and not suggested by us with any feeling of guilt or consciousness of having violated the law. We think our practices restricting licenses and other practices have been legal. But we prefer to reach a practical business-like solution of the matters in controversy, if others will do the same with us.

This statement of our position is necessarily incomplete because there are counsel for some other defendants who would like to supplement it. Possibly Your Honor would like to hear from them at this point.

Mr. O'Brien: If Your Honor please, representing the so-called Corning group of defendants, I wish to make a statement. That group consists of the Corning Glass Works, which is the main defendant of that group, The Empire Machinery Company, and certain individuals.

The Empire Machinery Company is not a patent holding corporation. In its inception it was an operating company, but it is now nothing but a company holding a certain stock in Hartford-Empire. The relief asked as against that company is that that company divest itself of stock in Hartford-Empire. I will not stop to discuss that at this time, but with Your Honor's permission, put that aside as separate, and which I think, if everything else were disposed of, [fol. 816] might be worked out amicably.

I think the purpose of this conference is to endeavor, if possible, to narrow the issues in this case, and out of this welter of allegations as to use and misuse of patents to narrow the case as far as practicable to the real, underlying issues.

As Your Honor is aware the main charge in the complaint against The Corning Glass Works and its individuals—I will omit them from now on—is that The Corning Glass Works maintains a monopoly of heat resisting ware. That is the specific charge in the section of the complaint making the charge against Corning, in the section of the complaint describing the extent of the monopoly of heat resisting ware as a monopoly charged against Corning; and nothing else in the section of the complaint which charges a monopoly in restraining the distribution of glass-making machinery, &c. That category is confined to heat resisting ware and containers generally.

I am going to summarize right at the outset what Corning thinks it can do. I think that will simplify any subsequent discussion. Corning Glass Works is not engaged in the manufacture of fruit jars, milk bottles or containers at all, with the exception of a negligible amount of nursery bottles. Corning has never been in the container business and has no desire to go into that business, so far as I know. It has confined itself to its own work. It does not manufacture or sell glass making machinery. It manufactures machinery for its own use only when it does manufacture. It has acquired on the course of its history comparatively few outside patents. Most of its patents have been developed by itself.

[fol. 817] Addressing myself in a summary way, first, to the main charge against Corning in this complaint, I think the only charge really is that it maintains a monopoly upon heat resisting ware. I say to the court at the outset that under the negotiations now in progress if this case can be disposed of without trial, Corning will undertake so far as it is concerned to surrender all of its rights affecting heat resisting ware. This concession is intended to mean that so far as Corning is Concerned, it will have no restrictions whatever and claim no restrictions whatever upon the manufacture of heat resisting ware by others. In other words that alleged monopoly will be completely disposed of. That is the main charge against Corning, and there will be no occasion to try this case on that.

With respect to other allegations, there is mention at one point in the complaint of electric light bulbs; in the description of pressed and blown ware it is stated that includes electric light bulbs. There is no specific charge in the complaint of a monopoly on electric light bulbs; but to the extent that that is involved in this complaint, it is involved under certain contracts, as is heat resisting ware, two of which are mentioned in the complaint. One is the so-called 1916 contract, under which Corning receives certain rights through Empire Manufacturing Company. The other is the contract which the complaint alleges is the real conspiracy, or the nub of the conspiracy—the contract of 1922.

Under both of these contracts Corning has acquired patent rights relating to the manufacture of bulbs as well as heat resisting ware. I have disposed of the heat resisting [fol. 818] ware. So far as the bulb rights are concerned, Cornings patent rights in that field are derived, first, from a contract of 1916, which, as the government is aware, its counsel assert to be an entirely legal contract. It is derived also from the later contract which the government claims is the nub of the conspiracy—1922. And most important of all, it has rights on its own machines, invented by itself, and covered by patents issued directly to itself, which, I take it, are not involved in this case.

Certain of those rights relating to bulbs counsel for Corning are of the opinion are entirely legal. Those rights come under the so-called contract of 1916, which antedated this conspiracy. I am not going into a detailed discussion of that because I am leading up to what Corning is willing to do. With respect to that field Corning is in a different position than it is on heat resisting glass; but we have outstanding invested in Corning three exclusive rights, confined to machines being operated by Corning, granted us by Hartford. If an arrangement can be worked out to leave us with those three rights, those exclusive rights which we have on those three machines which are actually in use by us, two of them invented by us, Corning would be willing to give up all of its rights, including rights under the 1916 contract which we insist is legal, and that would free the manufacture of bulbs.

Mr. Isseks: I am very sorry, but I just do not understand it. Later on I will have to answer it.

Mr. O'Brien: That is a conditional statement. I say Corning is willing, if it is permitted to retain those three exclusives——

Mr. Isseks: What are they? I am sorry.

[fol. 819] Mr. O'Brien: One is on the Donner machine. I will come to that in a moment.

Mr. Isseks: I am sorry.

Mr. O'Brien: I am simply generalizing. I do not want to confuse the court. There are three outstanding exclusives, not so vitally important in general, but of importance to Corning because they affect three of its machines. What I am saying is if it can be assured of those three exclusives, Corning is willing to consent to the entire cancellation of the 1916 contract and the 1922 contract, which are the two contracts in the complaint. Corning is willing to cancel any other contracts it may have relating to the subject matter of this complaint that do not involve third parties outside of this litigation.

May I explain a little more what I mean by those three exclusives? This is a broad offer, conditioned only upon this one point. In 1928 there were four concerns using the so-called Donner machine. That is a machine which has no relation to pressed or blown ware or anything in this complaint as the complaint is drawn. In addition to the categories described in the complaint, there is another category not mentioned in the complaint as blown ware. That means glass piping, tubing, thermometer tubing. As an illustration, cane ware, rods of glass. The complaint nowhere mentions tubing or cane or blown ware; and until

Mr. Isseks broadened the complaint by this statement he served upon us, we had no impression that was to be drawn into this particular suit with which we are now charged. This is just by way of passing. I am still adhering to my main point, Your Honor. We are now charged in this document, which was intended to narrow the issues, with maintaining a monopoly upon heat resisting ware, [fol. 820] bulbs, tubing and cane, signal and optical ware, laboratory ware, and various other types of non-container ware.

This tubing machine was used in 1928 by four people under patents. Questions arose as to whether or not it did not infringe a patent owned by Hartford, the so-called Peiler-Punty patent. Those four people, of whom Corning was one, thereupon purchased from Hartford for $350,000 an exclusive right to use that Peiler-Punty patent on tubing and cane. The form the transaction took was that Corning got an exclusive license, and it gave licenses to the three partners in the transaction, none of whom are parties to this litigation. They were Kimball, Libbey and General Electric. That contract expires in 1942 or 1943. It has only two or three years yet to run. But that patent is vital to Corning for the operation of this machine. Under the circumstances under which it was purchased, that exclusive really amounted to an assignment of the patent, although it did not take that form. At that moment Hartford retained the legal title to the patent, thinking it might use it in some machines that it was building of its own in the container field. It never was able to use it. The patent has been idle in Hartford's hands, I mean the naked title. It is our view under the cases that purchase of that exclusive right, where the only use of the patent turned out to be the one applied, amounts to an assignment of the patent.

That is one of the exclusives that Corning desires to retain. It was bought and paid for, and involves other parties not parties to the litigation.

The second one is a patent known as the Howard Auto Blow Patent which was owned by Hartford. I will not [fol. 821] narrate the circumstances. Suffice it to say that Corning had invented a machine known in the trade as the ribbon machine, a very marvelous machine for making bulbs. After it was invented this inventor, Howard, who had an application for something of the same sort, redrew his claims to fit the Corning machine, and received the patent which went to Hartford. A dispute arose, Corning claiming those rights as really its rights; and to settle the dispute Hartford gave Corning an exclusive, non-royalty license under that patent for the particular features of its own ribbon machine to which it referred. That patent, therefore, or exclusive from Hartford relates solely to those claims in Corning's own machine, and they have not been used anywhere else. That patent has not been used elsewhere by Hartford. Corning desires to retain that exclusive right. That patent likewise will expire in two or three years.

The third is a right which goes to Corning under the 1922 contract to the so-called Smith Reissue Patent, which is thought has claims that might be made against two of Corning's own machines. It has from Hartford this exclusive license to use that device on those two machines.

Those three rights are outstanding. I speak of them because in discussing this matter with the government, the demand has been broadly made that Corning must give up all exclusives. In order to be perfectly candid, I want it understood that those are three exclusives that Corning is not willing to surrender. One of them relates to a drawing machine strictly speaking not in the case. With that condition fulfilled, being allowed to retain those legal rights we have honesty acquired, and those rights only, Corning is willing to cancel the two agreements; and [fol. 822] that will entirely wipe out any alleged claim of restriction or monopoly maintained by Corning upon bulb machines not invented by Corning and owned by Corning, reserving those rights of course to our own machines such as every other manufacturer has.

That is the situation. If that is done Corning will then be on the same footing with everybody else, so far as the Hartford licenses are concerned. With the exception of those three instances, which in themselves are not of vital importance to the trade, Corning will have no rights, outside of its own patents, that anybody else does not have. It will take then from Hartford new licenses on the same basis as every other manufacturer of glass in all respects.

To sum up, Your Honor, I am saying that Corning is willing, if this case can be adjusted, to unequivocally give up heat resisting ware restrictions, the subject matter of the complaint. It is willing, with the exception of those three instances, to surrender all the other rights, and to consent to a cancellation of the contracts, one of which I think clearly antedates the conspiracy.

Turning from that subject to the subject of Empire Machine Company, it is our understanding, under the proposal made by Hartford, supplemented by our own concessions, Hartford will be in the position from now on where its operations will be subject to the scrutiny of the court, if the court retains jurisdiction of the matter, as I assume it would and would hear complaints and have a process set up for hearing complaints as to any alleged instance of non-conformity. Hartford, I take it, would be in the position, practically, of being almost a quasi-public cor- [fol. 823] poration. All licenses would be uniform as to conditions and terms of royalty and no one would get an advantage over anybody else.

In that situation we think it is fully unnecessary, at least at this time, to insist that Empire divest itself of its holdings in Hartford stock. If this case is tried, Empire will fully satisfy the court that it does not dominate the affairs of Hartford, although it owns forty-three per cent of the stock. But that is by the way. The chief reason, I am frank to say to the court, why it would be unfortunate to have such an adjudication as to cause a divestiture of the stock is that the sale of that stock, which has been held for many, many years, would result in the necessity of paying huge taxes, which would do nobody in this industry any good, would not change their situation in the least, and would be in the sense of the stockholder a waste of his funds, that is, unless it is a necessary act.

I have not taken up these statements; but what I say is embraced in them. The main charges are, as Your Honor is aware, that we have been maintaining a monopoly under these two contracts; and there is also the charge that we have refrained from going in the container field. I take it the government is applying for an injunction to compel us from refraining to go into the container field. But I will pass that. The other requests are of a general character.

Mr. Middleton: May it please the Court, we are next on the list in the order of defendants named in the complaint.

The atmosphere as to the claims made against Owens and the relief requested there is somewhat cleared by the letter which Mr. Isseks kindly sent to me, and which I got, I be-

[fol. 824] lieve, yesterday. Mr. Wall mentioned it. If the court desires a copy of that letter, I will pass one to the clerk so that the files may be complete. That leaves Owens with five elements of relief requested against it. I shall address my remarks first to them.

The first is the request that an order be made cancelling the 1924, 1932 and 1935 agreements between Owens and Hartford. I assume that the reference to the 1924 agreement was an oversight, a typographical error probably, because the government's petition alleges the cancellation of the 1924 agreement; so there can be little doubt that the government recognizes that that agreement passed out of existence in 1932 when the 1932 agreement was drawn.

Likewise the 1932 agreement has been cancelled. The government has copies of all of these agreements between the parties. There is a stipulation regarding them; so that there is no question as to the correctness of those copies; and Section 1 of the 1935 Agreement specifically cancels all previously existing agreements. That section is copied in the letter which I wrote to Mr. Isseks, of which the court has a copy.

I am at a loss to know what the government could desire the court to do in that regard, more than has already been done. Certainly an order to cancel the 1932 agreement would avail nothing in view of the signed and executed agreement of 1935, which does cancel it specifically by its terms.

That leaves only the 1935 agreement. There are several of them. They were executed because of the necessity of setting up an entirely new arrangement between Owens and Hartford. Under date of September 30, 1935, in the first of this series of agreements of 1935, all of the previous agreements, and all then existing agreements, between [fol. 825] Owens and Hartford, of every kind, nature and description, were cancelled. So that left the parties without anything.

Then they proceeded to cover the relations between the two companies, relations that necessarily must have continued to exist, by a new set of agreements. These constituted principally cross-lincense agreements, under which Owens licensed to Hartford certain rights it had, and Hartford licensed to Owens certain rights it had; and then there were ancillary agreements or auxiliary agreements, which set out anew the forms of licenses which would be used;

so that three or four of these agreements are nothing more than a recitation of forms of licenses and agreements that would be used. *That* are not fundamental agreements, except in so far as those forms contain provisions.

We submit there is no statement anywhere as to any respects in which those 1935 agreements are invalid or illegal. We just know of no type of order the court could make unless he just cancels them out. That is what is asked to be done. But I do not believe Mr. Isseks means just what that says literally, because if all those agreements were cancelled, there would be nothing covering the relations between these parties.

We use a great deal of Hartford equipment, the right to use which we have acquired from them. We have certain rights covered under these 1935 agreements. We need those. They have stackers and conveyors. We need the rights given us by those agreements. We have certain rights in feeder and former inventions, which we need and want. We do not want those agreements cancelled, if they just do away with all written contracts between us; for if they do something else would have to be substituted.

[fol. 826] These contracts do not contain, as we see it, any vices that can be condemned. They are non-exclusive licenses we get from Hartford under that agreement. It does not give us any exclusive rights to the use of their equipment. They can give the same rights to anybody in the world. Likewise the rights we give back to them in our own agreement are non-exclusive. Neither of us gets any exclusive rights. They are restricted only in a very limited way, and if Hartford removes the restrictions from its agreements and licenses, such as they have indicated their willingness to do, it seems to us all possible questions of restrictions in these agreements would be removed, because we are not particularly interested in restrictions. We have no need for restrictions. In so far as these agreements between us and Hartford recognize the rights of Corning, for instance; there is some limited recognition of those rights in this group of agreements, we do not care whether Corning's field is protected by the execution of restrictions or not. That is a matter between them and Hartford.

So I don't know of any restriction that would have to be included in a contract. If that is the basis on which they ask that the 1935 agreement be cancelled—and that is the only one we can think of—that can all be taken care of.

The second point of relief requested is that an injunction is asked against Owens from controlling or influencing the licensing policy of Hartford. There is such an absence of basis for a request of that kind that it is difficult to discuss it. Certainly there is nothing in the agreements between Hartford and Owens; and the only agreements are those of [fol. 827] 1935. There is nothing in them to suggest that Owens and Hartford have any such arrangements, or that Owens does control or influence Hartford's licensing policy. Even though we deny that there now exists or has existed any such condition, we do not have any objection to an order being made enjoining us from doing it; provided it does not make a finding that we are guilty of something which we disclaim and do not believe there is any evidence to support. But if counsel for the government desires to say to us, "You must not in the future control Hartford's licensing", we will say, "Fine; we never had any idea of doing so anyway." We will graciously accept such order without any trial or the introduction of evidence.

The same thing substantially may be said with respect to the third item of relief requested, which asks the cancellation of Owens' agreement with Ball Brothers, and Hazel-Atlas and Hartford which restricts Owens' annual fruit jar production.

There seems to be some lingering suspicion in the mind of the government that there is or was some agreement between Owens and Ball Brothers to restrict the production of fruit jars. We deny that. We do not believe the evidence will support it at all. But again we say it is purely academic so far as we are concerned. We have made and sold fruit jars. We can still. We are willing to sell not only 100,000, but 500,000, if anybody will buy them. But we are willing to have the court say to us, "You must not restrict any agreements of any of these folks for the production of fruit jars." There is no reason to put in any evidence about that whatever, so long as we are not found guilty of something which would be academic in character. [fol. 828] On the fourth provision, rather the fourth item of relief requested, it is there requested that Owens be enjoined from "holding or controlling stock in any of the other corporate defendants or from participating in the management or formulation of the policies of any other corporate defendant." That has been so completely answered that I doubt Mr. Isseks would care to insist upon that any further in view of the showing we have made.

Mr. Isseks: I certainly do, Your Honor, absolutely. I do insist the proof will demonstrate without a shadow of a doubt that Owens to-day has something to do with the policy of Hazel-Atlas and Thatcher, and has a member and representative on each board of directors.

Mr. Middleton: I don't know what the court could do more than we are willing for the court to do, if we tried the case. A year from now we are willing to have the court tell us that we should not do it.

Mr. Isseks: If he says he is willing to have an order restraining it from participating in the policies of the other companies, I withdraw any statement I made. I thought he said I withdrew the charge. We do not withdraw the charge. We intend to prove the charge if the issue goes to trial.

Mr. Middleton: What I had in mind was that since the statement which was handed us was drawn, as I understand it, Mr. Cramer and I decided upon the form of the stipulations. They were ready for some time. We finally got together and signed them. Part of those stipulations [fol. 829] was one covering this very point. I just assumed the government learned the fact by the stipulation that Owens does not have any stock in any of these companies and has not had for many years. It at one time had some stock in Hazel-Atlas, many years ago. It does not own any stock whatever in any of the defendants. Its officers and directors do not own any stock in any of the other defendants, except four of them. There are some twenty-two of them, taken together, who own just a very small percentage of the stock as an investment, in these other companies. For instance, in Hazel-Atlas, the total holdings of everybody in the last three years, officers or directors of Owens, amounts to one-half of one per cent. of the total Hazel-Atlas stock. In the Anchor Hocking the total holdings amount to two-thirds of one per cent. In Thatcher it amounts to probably three per cent. In Lynch it amounts to approximately one and one-third per cent.

We just assumed when the government found that situation, they would recognize in all fairness that there was nothing in that situation for the court to enjoin. Certainly that does not carry with it any control, or even power if they desired to elect a single member of the board. There is just nothing in that more than that these individuals have some money invested in the other glass companies, as they do in other industrial concerns. But we are content that the court should say to us by way of injunction, "Owens must not hold any stock in these companies:" and to go farther and say, "Owens must not dominate or influence the corporate action of these companies." I do not see what more the government could expect or desire.

The last section is broader in character. It asks that Owens be restrained, including its officers, &c., from con- [fol. 830] tinuing the practices complained of; and the letter of Mr. Isseks clears it up as meaning only those immediately preceding in this particular document, being those set forth on Pages 7 and 8. I should like to refer to some of those just briefly, inasmuch as Relief No. 5 refers back to all fourteen points of the practices complained of.

The first practice complained of has already been covered. It refers to the three agreements: 1924, 1932 and 1935, in which there are cross licenses. Two are already wiped out. The third, we think, contains nothing that warrants evidence. If there is any question as to the legality of the 1935 agreements, the court can consider those agreements and any law submitted in connection with them, and determine whether or not there is anything wrong.

"(2) Owens and Hartford are responsible for the elimination of all independent manufacturers of glass making machinery."

At most that is a statement of an alleged historical fact, which we deny; but it is certainly not a statement of any current practice, and, therefore, I assume relief against it cannot even be requested.

In (3) it is charged that Owens by means of these three agreements, two of which are already out of existence—

"Has refrained, and is refraining from the development and licensing of automatic glass making machinery in competition with Hartford. In fact, Owens has not licensed any one under its suction machines since its 1924 agreement with Hartford."

Again there is nothing involved, as far as we see it, for an injunction. We have not refrained from developing ma-[fol. 831] chinery. We have spend something like a million dollars a year on research and engineering. We have taken out new patents constantly. The list shows which the government has. We have continued to develop. But even if we had not, I just do not see what kind of order the court could make. Could they order us to employ a group of inventors and to put them to work? If we did might not we then be criticised for undertaking to monopolize the field by employing inventors to invent more than some one else? I don't know just *with* the philosophy would be with respect to carrying out inventive operations, if that is what we are supposed to do. That is with respect to development.

With respect to licensing, it is charged that we have refrained from licensing. In fact we do not have any license. I do not know what the court would direct us to do. We have some things; but I mean our basic patents upon the suction machine, the Owens type machine; the basic patents have expired. They do not need a license. Ball Brothers owns several of them right now and operates them. It has no license, because it is free property. So I do not suppose an injunction could issue directing us to grant licenses that nobody wants.

To a certain extent the same thing is true as to the feeders and formers in this case. We have some feeder and former inventions; but some of the basic patents there have expired. It is very doubtful if we have feeder and former inventions which in themselves would be attractive. Certainly we have had no requests for licenses. Certainly we would not object to granting a license. We have no objection to granting a license to what somebody wants, if we have something they want to get; but our feeder and former rights are not comprehensive enough to enable somebody [fol. 832] to start up in business by taking a license. We think consequently it is just a moot question. If the court should direct us to grant more licenses than we have, nobody would want them in any event. If the government can set out what they think we should do, I presume an order might be agreed upon without any question of evidence.

"(4) Through its contractual relations with Hartford, Owens has been and is aiding to maintain a system of restrictive licenses by Hartford."

The statement made by Hartford that their restrictive licenses would be removed would perhaps take out of our licenses anything there, because they are restrictions upon us, rather than the other way.

"(5) Owens is a party to the maintenance of monopolies in the manufacture of (a) glass containers generally, (b) milk bottles, and (c) fruit jars."

That at the most is a recitation of an alleged interesting historical fact, but states nothing to be the basis of an injunction. We deny that it is such.

"(6) By reason of its contractual relations with Hartford, Owens has agreed to the exclusive right given by Hartford to Corning in the manufacture of heat-resisting ware, signal and optical ware, laboratory ware, bulbs, tubing and cane, and other forms of non-container ware."

Perhaps that may be true when the agreements were taken together. Without conceding it, the whole question would be eliminated if the question were disposed of on the basis outlined by Mr. O'Brien. So that vanishes.

"(7) Owens has prevented and is preventing Hartford [fol. 833] from licensing persons and corporations desiring to enter the glass container industry."

If the government thinks so, and the court desires, they can tell us not to do that. We have not done it. We have no intention or desire to do it.

"(8) By virtue of its 1924 and 1932 agreements with Hartford, Owens was granted a preferential competitive position over other manufacturers of glassware (other than Hazel-Atlas since 1932) which it still enjoys in view of the fact that in 1935 Owens received $2,500,000 in lieu of a fixed percentage of all royalties received by Hartford."

In 1935, after all licenses had been cancelled between Owens and Hartford—they were cancelled under the agreement of the 30th of September, 1935,—there was nothing remaining—Owens then granted to Hartford a non-exclusive right to use its feeder and former inventions over a period of years; and that included its future inventions of that sort for a definite period. For that right, instead of Hartford paying royalties to Owens, they agreed upon a fixed sum, which is not at all unusual in business. The fixed sum agreed upon was two and one-half million dollars. That is just the same situation as if Owens had sold to Hartford one of its factories, so far as money is concerned. Had Owens sold its West Virginia Factory at that time to Hartford for two and one-half milliion, Hartford could take it and operate it, and Owens could put the money in the bank. That is just what happened when Owens virtually sold all of its rights, sold a license to use all of its feeder and former rights for the life of those patents. Instead of [fol. 834] being paid royalties they are paid in a lump sum.

On the other hand, Owens took a license back from Hartford permitting Owens to use the Hartford feeder and former inventions for the life of those patents. There was no lump sum the other way, but Owens then was required to pay the usual royalties paid by any one else for the use of those machines. What happened? Instead of Owens being in any preferential position because of that, I imagine that Owens has paid to Hartford more royalties than anybody else. I don't know what the facts are; but I do know since 1935 when that agreement was made, Owens, a competitor of all the rest of these folks, has paid Hartford in royalties for the use of its machines something like four million dollars up to date; and up to the filing of this action in December, it was nearly three million dollars. In other words instead of their being in a preferential position growing out of that, Owens thereafter paid to Hartford royalties, which, in the short space of a little over two years, amounted to more than two and one-half million dollars.

So there just is not any substance to that charge as made. And it is a past transaction. It is something that happened in 1935. As I say it is just as much closed as though Owens had sold its factory instead of selling a license for the life of patents to use them. What can be enjoined? If the government can suggest anything in that situation to be enjoined, we would be interested, we would be cooperative; but I don't just see what there is in the subject that lends itself to injunction.

[fol. 835] "(9) By virtue of its 1932 agreements with Hartford, Owens is responsible for placing Hazel-Atlas in a preferential competitive position over other manufacturers of glassware (other than Owens) which Hazel-Atlas still maintains."

That, again, is merely at most a recitation of an alleged historical fact. There is nothing current in it. It refers to an act done in 1932, if at all, which we could not do or undo. The 1932 agreement no longer exists. The 1935 agreement with Hartford has no reference to Hazel.

"(10) By reason of agreements made by Owens in 1933 with Hartford, Hazel-Atlas and Ball Brothers, Ball Brothers was given exclusive rights in the manufacture of fruit jars and Owens agreed to limit and did limit its own production of fruit jars."

So far as that relates to us we say that it is not true; but the court may tell us not to do that if they want to. We will not beat our grandmother and we will not limit our production of fruit jars, either one. The other phase of that which confers exclusive rights: we have no interest in it. We do not care to do that. If they care to cancel any exclusive rights that may exist, it is agreeable to us. We do not have any exclusive rights.

(11) has already been spoken about.

(12) refers to the maintenance of quotas and control of prices. There are no quotas determined by agreement so far as we know. We are not parties to it. And there is no maintenance of prices by agreement. So the necessity of [fols. 836-842] taking evidence there probably would vanish if we say to the court and government, "You can enjoin us from having any agreements for quotas of production. You may enjoin us against having any agreements to fix prices or any agreements under which one of us will be price leader." I don't see how the court could do any more than that. If it just happens that we are the biggest and best manufacturer of a certain article, and somebody wants to charge the same price that we charge, I don't see how the court could prevent that by any order. All that could be done would be to enjoin the doing of that sort of thing by agreement of any kind or description.

That covers (13) and (14) both, which refer to price leadership and production quotas.

When we get through analyzing those statements, Your Honor, it seems to us that there is practically nothing left which cannot be covered by an order of injunction covering future conduct, which is all the government could ask in any event. We are ready and willing to discuss those matters at any time or at any length with the government in the hope of reaching some satisfactory arrangement.

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[fol. 843] Mr. McCallister: If Your Honor please, I am speaking for Ball Brothers, and want to speak briefly, if possible. I am first going to take up the list of complaints which the government has outlined against Ball Brothers.

(1) indicates that there are several contracts—the complaint refers to four—and I assume that we might consider those four contracts separately.

The first contract of 1933 which occurs to me is the agreement with The Hartford-Empire Company under which Ball Brothers acquired a license under the Hartford feeder patents. That agreement was entered into after long negotiations, and only after the Hartford-Empire patents had been sustained in the Eighth, Sixth and Third Circuits. The relief requested involves, so we read it, a cancellation of that agreement.

We would be perfectly willing to do anything reasonable; but that agreement involves patent rights, and it involves rights under which we have operated now since 1933. It involves rights which have been passed upon by the Courts. While we are perfectly willing to do anything which to the court may seem just in connection with a settlement of this suit, nevertheless we do not want to be placed in the position of having to defend what we have done in the past, and to defend what we will probably continue to do in the future, by way of the use of these inventions, which Hartford claims are covered by its patents,—patents under [fols. 844-855] which Ball Brothers is licensed, and which the Courts have said are covered by the Hartford license.

One of the other agreements of 1933, as alleged in the complaint, is a four-cornered agreement between Ball Brothers, Hazel-Atlas, Hartford-Empire and Owens, which, according to the complaint, contemplates a limitation on quotas. We contend there has been no such agreement; that the government cannot prove it; that there is no limitation of quotas in connection with fruit jars as between those four parties or three parties: Hazel-Atlas, Owens and Ball Brothers; consequently, we will not object to any injunction which involves that so-called contract.

The other two contracts are contracts which were entered into between Ball Brothers on the one hand and the so-called Knox Associates on the other hand, and Ball Brothers on the one hand and Brockway Bottle Machine Company. Both of those contracts were considered to be legal at the time they were entered into. They were entered into by Ball Brothers in the light of advice of counsel. They did involve the purchase by Ball Brothers of the right on the part of the other parties to the two contracts to manufacture fruit jars.

If we can arrive at a settlement without going through the long and tedious trial of a case, there is no doubt that Ball Brothers can arrive at some arrangements which can be satisfactory to the government and which will insure a settlement of the situation.

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[fol. 856] Mr. Diven: If the Court please, on behalf of the Lynch Corporation and its officers, I might state the practices complained of are limited to two in so far as Lynch is concerned. Lynch is engaged in the building and selling of forming machines, not in the making of containers or any glassware.

In 1933, following some six years of contest in the Patent Office, Lynch was confronted with an unfavorable decision that it had no right to use patents—which would soon be issued as patents—that were necessary to the construction and sale of its product. It made the best contract it could. It obtained a license from Hartford who came in control of that patent; and in that contract there was a provision that Lynch might make and sell as licensee the forming machines,—not feeders as stated here.

Subsequently that contract was modified so that it did [fols. 857-858] not apply to certain lines of machines. That provision applied only to the narrow-neck form of machine.

With Hartford's statement, I feel sure that we may entirely eliminate the provision which restricts us. It is not of our seeking, of course, and we would be very happy to leave it out. I take it the government does not desire the cancellation of the contract entirely, because that would leave us and no one else with the right to manufacture and sell any of these machines. The restrictive features of the contract that no one have anything to do with the purchasers to whom we may sell, I feel sure may be eliminated, and it can readily be done.

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[fol. 859] Mr. Isseks: If Your Honor please, various statements were made by different counsel for the defendants, denying certain allegations in the complaint, and also denying some of the practices complained of in the summary. The fact that the government does not enter into a dispute as to the details does not mean that the government concedes the statements made by counsel for the defendants.

As the government understands, the purpose of the summary of practices and the purpose of this conference is an effort to either dispose of the case without a trial, or to narrow the issues; and with that effort the government fully concurs. Therefore the government was quite pleased to hear that Hartford is willing to give up practically all the restrictions and practices complained of in the complaint, other than to dissolve itself, and bring about a competitive situation in connection with the manufacture of machinery in the glass-making industry. As to the other monopolies of glass containers, fruit jars, heat resisting ware and milk bottles, what counsel have said is an indication that those matters can be worked out by injunction, by lifting the restrictions and by injunction.

After the session this morning counsel for the government conferred at length, until ten minutes to two, with counsel for Hartford and counsel for Corning; and it becomes apparent from that conference that Corning's willingness to cancel the 1916 and 1922 contracts, subject to certain eliminations, will bring about a competitive situation in the entire industry in regard to all phases of the manufacture of glass; not only glass containers, but bulbs and heat resisting ware. I think that that matter can be worked out.

[fol. 860] On the question of the divestiture of the forty-three per cent. stock of Empire Machine Company in Hartford, I think, too, based on the conference during the luncheon recess, that at least some effort will be made to work that out. The government feels strongly that divestiture is absolutely essential. The question of time, in order not to penalize holders of stock, is one I think can be worked out, under the supervision of the court, provided everything else can be worked out.

As to Owens, I am not going into details; but the government feels strongly that all contracts referred to in the complaint and subsequent amendments must be cancelled. I think a new contract that eliminates the illegal restrictions can easily be worked out.

As to Hazel-Atlas, I do not want to go into details as to how the contract came about, because that would be going into evidence; but the government feels strongly that the provisions that give it a competitive advantage over the other people in the industry must be cancelled. The government will not enter into any negotiations as to whether or not any payment should be made by Hartford to Hazel-Atlas. That is a matter between Hartford and Hazel-Atlas. On the other hand the government feels strongly that any disposition of the matter should be publicly made, and known to everybody in the industry, and should be a part of any decree that this court enters; so that in the future no one can complain that that settlement brings about an advantage to Hazel-Atlas.

As to Ball Brothers' situation, there, too, we feel strongly that a cancellation of contracts is essential. As we under-[fol. 861] stand the law, it is unnecessary to have all parties to the contract before the court. On the other hand if Ball Brothers can work out a deal with Brockway or Knox, which again must be made public, we have no objection whatsoever.

As to the Thatcher contract, there, too, we feel strongly that the agreement must be cancelled in order to bring about a competitive situation. We think it makes no difference whether Hamilton is before the court. There, too, any arrangements that are made between the parties should be submitted to Your Honor and made a matter of public record.

To go back to Ball Brothers, we feel, as counsel indicated they might be willing to do, that Three Rivers must be divested and put on the auction block. It may be that a customer will not be found; but at least some effort should be made to bring about competition in that part of Texas.

As to Anchor Hocking, we feel the stock owner there by the president of Anchor Hocking, a former director of Hartford, that stock interest, which is five per cent., a substantial interest in Hartford, should be divested, over a period of time so that there will not be any harm done.

As to the other defendants, in junctive relief, we believe, will serve the purpose.

As I understood the offers made this morning by counsel for the various defendants they attach as a condition of the discontinuance of practices the settlement of the litigation. As to restraint of trade in violation of Section 1, and restraint of trade in violation of Section 3, of the Clayton Act, tying clauses, injunctive relief effectively will dis- [fol. 862] pose of the case. As to the violation of Section 2 of the Sherman Act, likewise injunction, as I have indicated, will probably take care of the monopolies of glass containers, fruit jars, milk bottles, &c., because there is more than one company manufacturing them. But as to Hartford's monopoly,—a conceded monopoly of 97 per cent of the industry, practically 100 per cent., on machinery and patents, as I understand the position of the other side that is a lawful monopoly. But the government takes the position that it is an unlawful monopoly. Going back to 1921 and 1922, they, first alone, and then in conjunction with Owens and others, acquired every competing company. I will not take Your Honor's time to read any documents that show clearly in fact it was a deliberate effort on the part of Hartford to monopolize and eliminate every competitor in the industry.

Your Honor, we do not want any confiscation here under any circumstances. An injunction restraining that monopoly would of course bring about confiscation. If we enjoin them from carrying on that monopoly, they could not move. The only way to do it is through some form of reorganization under the aegis of the court. That reorganization, we suggest, should take the form of, let us say, three or four competing companies. It could be done by divesting from Hartford some of the patents and properties that it acquired from the various companies that it eliminated from the industry. That perhaps is one way. We do not know. Our suggestion is that Hartford be broken up, just like they broke up the American Tobacco Company into four competing units.

It will be argued that it cannot be done. As far as the [fol. 863] patents are concerned we take the position that it can be done. We take the position that the four companies can each be given the same rights to sub-license. They each can determine their own policies, with separate and independent boards of directors; one using one basis of royalties, and another using another basis of royalties. It might also have one company manufacturing feeders; another, formers; another, Lehrs; but we don't think that plan is feasible. We believe there should be some form of competition. That is the purpose of the Sherman Act. They have in our view brought about a monopoly of the situation. All that we ask is that when the time comes Your Honor decide whether or not we are correct in our view that there should be competing companies.

As to the procedure, I don't know whether or not the defendants are willing now to abandon all of the practices and to be enjoined with respect to those practices. We would also feel entitled to an injunction against the various monoplies other than the monopoly of patents and machinery. If they are willing to do that—I don't know whether or not they are willing—to the extent that there is an injunction against those practices under Section 1 of the Sherman Act, and Section 3 of the Clayton Act, there will be no necessity of offering any proof before Your Honor; and all proof will be directed to the fact whether or not there is a monopoly of patents and a monopoly of machinery, as to which Your Honor will have to decide.

There should be some form of reorganization. With that statement, Your Honor, I want to make it clear that we are perfectly willing to sit down at any time, to-day at the end [fols. 864-867] of the session, to-morrow, Sunday if necessary, or any day next week. We urge upon Your Honor, though, the necessity of going to trial, either on October 1, as Your Honor fixed in the spring, or at the date Your Honor indicated when here last, some week or two thereafter. We have sent out subpoenaes for a number of witnesses. If there is going to be an adjournment we will have to notify those people all over the United States and tell them exactly when to come. I gather from counsel for the defendants that they still urge upon Your Honor an adjournment ot the 14th of 15th. Again I say a few days will not make any difference.

If counsel are willing to have a form of reorganization of Hartford, in addition to the injunction against the other practices, or if they are not willing to do that and are willing to have a decree issue now, we are agreeable to limiting the issues of the case to that extent. Of course, Your Honor, we will not submit any evidence on any issues which are settled by any decree as to discontinuing practices.

* * * * * * *

[fol. 868] Mr. Isseks: I think I ought to make it clear that the government does not know whether counsel for the de- [fols. 869-881] fendants are willing to consent to any degree in any form. So far as the government is concerned, we would be very grateful if they would consent to a decree in some form, and eliminate part of the case.

* * * * * * *

[fol. 882] In reply to Mr. Isseks' suggestion that perhaps a decree could be entered taking the concessions of the parties, and then proceeding to try out the rest of the lawsuit: one reason why I made the concessions this morning in the form I did, namely, that it was with the understanding that the case could be settled, was this: I had advised my clients to surrender rights here which, in the opinion of various of its counsel, are perfectly valid legal rights, and not affected by the alleged conspiracy. We are in negotiation with the Hartford Company for the retransfer to them of all these heat resisting rights right now, so that they may all be set free. If we are going to give up these valid rights on bulbs, some of which do not expire for some years, so that that may be set free, it was my hope by so doing we would avoid the expense of this litigation; and that we would avoid the danger of some adjudication which [fols. 883-890] would render us liable to treble damage suits.

I simply want to reiterate that caveat. I am not making this as a proposition, as a bargain, or in any captious way; but I made the concession in the form I did, hoping to accomplish those things in the end. If this question of dissolution is to be discussed later, I should wish to be heard at length on it.

Mr. Isseks: Your Honor, first of all, I want to make clear that the concessions made by counsel for the defendants are, in our minds, something to be commended. The fact that they are willing to give up a number of these restrictions without trying the case to us is laudatory. On the other hand I must point out unless there is a decree enjoining the practices which they give up, a decree along the lines suggested in the summary of practices, the purpose of this suit has not been served.

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[fol. 891] The Court: You may proceed.

Mr. Wall: If Your Honor please, what I have to say is in the nature of a report upon the progress or lack of progress since the last session here. At the conclusion of that I shall have a few words to say about things which we propose to do which may affect further proceedings in the case, and it may be should be made the subject of an order under Rule 16, at least if Your Honor sees fit.

At the session held on September 20, Hartford-Empire made concessions which it fully expected would satisfy every demand made by the government. Those concessions, and the concessions made by the other defendants, for the purpose of settlement appear in the transcript of the hearing. I shall not now review them because Your Honor is no doubt familiar with them anyway.

At the conclusion of statements by counsel for the various defendants, the government commended them for the concessions which they had made; but at that time took the [fol. 892] position that there was still an issue which they must consider, saying, if I have the page here, that if the defendants would consent to an injunction against the practices which they were voluntarily abandoning:

> "If they are willing to do that—I don't know whether or not they are willing—to the extent that there is an injunction against those practices under Section 1 of the Sherman Act, and Section 3 of the Clayton Act, there will be no necessity of offering any proof before Your Honor; and all proof will be directed to the fact whether or not there is a monopoly of patents and a monopoly of machinery, as to which Your Honor will have to decide."

That is at Page 66.

And a similar statement that is to the same general effect appears later on Page 91, to the effect that the only remaining issue, as counsel saw it, was the question of whether there was a monopoly of patents and glass-making machinery within Section 2 of the Sherman Act.

The question of a consent decree was discussed, as Your Honor may recall, counsel saying: (Page 71)

> "I think I ought to make it clear that the government does not know whether counsel for the defendants are willing to consent to any decree in any form. So far as the government is concerned, we would be very grateful if they

would consent to a decree in some form, and eliminate part of the case."

[fol. 893] During the course of the proceedings Your Honor suggested, I think just before that excerpt which I have read, the possibility of a draft of decree; then a submission to the court later of a statement of the things which still remained to be threshed out.

Following those suggestions and what was said at that conference, we continued conferences which have gone on for a long time about these various matters: the consent decree, the remaining issue which it was said rem-ined in the case, and, even more than that, a discussion of the possibility of meeting the claim which the government insisted upon litigating, stating it in terms of remedy rather than the legal act or issue of dissolution.

We have, I regret to say, gotten nowhere with our friends upon these matters. The form of consent decree submitted to us is so entirely unsatisfactory, so far from what we expected here after our conference here on the 20th of September, that to our minds it does not form any helpful basis for further discussion as to a consent decree.

We have in the course of our discussions with counsel for the government found that it is not merely the issue of an existing monopoly of patents and glass making machinery which they desire to litigate, as we understand it,—and if I am wrong they may correct me in due time; what they desire to litigate is not the question of an existing monopoly, which might be rather simple, as was indicated, simple in scope of proof, as was indicated at the last session; instead it is said, again as we understand it, that they desire to litigate [fol. 894] the question of conspiracy of all these defendants, excepting possibly the Glass Container Association, and as to that we are not informed fully; they desire to litigate the question of conspiracy of all these defendants to achieve and effect a monopoly of patents and of glass making machinery by Hartford.

I might say here that I am going to drop out glass making machinery in discussing this further, because if the patents are rightfully and lawfully owned by Hartford, they can exercise the right to make and lease the machinery covered. So the real question is the rightful acquisition of the patents.

I might say further on that subject it is apparent to us that this will not accomplish any substantial narrowing of the proof or of the issues; that it will not lighten the labors and burden of litigation, the labors or expense of court or counsel; because following this theory which has developed of a conspiracy to monopolize in Hartford's possession, it will be necessary or desirable for the government to introduce practically all of the proof and to harrow over all facts and incidents which would have been presented to the court anyway if there had been no effort to narrow the issues; if not all the issues and facts, at least two-third or more; and I assume if the Glass Container Association is not dropped from the suit, it will be all of us. So I might say to Your Honor nothing has been accomplished. We have been unable to accomplish anything unassisted which will have any effect to limit the scope of this trial.

If this were a charge of an existing conspiracy; if it were alleged that now there was a conspiracy to further a monop- [fol. 895] oly of patents in our possession, we would consider going f*a*rther than we have; we would consider whether we could not safely accept by consenting to an injunction against any such conspiracy, on the theory which Mr. Middleton so aptly expressed ten days ago, that he was willing and he went a long way to say he would be willing to be enjoined from beating his grandmother. We feel that way. If this was a charge of an existing conspiracy, we would be moved by the same motives, no doubt.

But that is not what is in mind apparently; it is apparently the desire to hold a lengthy inquest over a conspiracy which has had its life and departed, which has achieved its object*ed* and departed life years ago; the result of the combination alleged being a present monopoly in Hartford. We see no way in which we could consent to an injunction against that, or how it could be enjoined. There is nothing we could say upon the subject, except if any such thing is to be done; if we are to be tried on a conspiracy charge for months and months, with the net question only to be determined whether there is an existing conspiracy, a combination of patents in violation of Section 2, we have accomplished nothing; and we see no hope unassisted of accomplishing anything.

We regret the turn this has taken. We have had for a long, long time, since this suit was begun, a firm conviction that the matters in controversy or dispute between us were capable of solution if they were approached with a reasonable and practical spirit. We still feel that way. We have felt and feel that a poor settlement is better than a good [fol. 896] lawsuit, and we are willing to go along and try to work it out if we can.

Following that thought out we have at last in September secured a statement, which we had hoped to secure long ago, as to the existing practices which it was desired to have discontinued. We have offered to discontinue all of them. We have reserved only one thing: the right to continue to live and do business; and that we intend to preserve.

This has taken a great deal of our time. I think it is due the court to say why we must now change our position. It has taken a lot of our time from way back in spring until now. It has practically taken our undivided time and attention all during September. It has been a serious detriment to the preparation of our case. We have reached a point now where we must concentrate upon a preparation of the case and not spend our time in fruitless parley.

From our standpoint it seems each time that we make a concession, make an effort to agree in good faith upon matters in controversy, the only result is additional and more stringent demands. So much for that. I simply say this again, that unassisted we have no hope that we will be able to reach any agreement, although we feel it should be reached. We feel that we have gone as far as we can. We have done the best we can to do it; and we would be willing even to accept this injunction against conspiring to monopolize patents. I think it could be safely worked out, if that were the issue. But it is not. It is a charge of past conspiracy, so-called.

When we were here I believe it was September 6—I am [fol. 897] not just sure—I said to Your Honor at that time there were some things we proposed to do, regardless of any action by the government, which might affect the conduct of the case. I come now to that point. I have a statement here, of which I will give Your Honor a copy in a moment or two, also counsel for the government, which covers those matters.

When we were here at the last conference, we discussed the removal of Corning's exclusive rights. I am not now informed definitely just what will be done on that; but we will go as far as we can; and counsel for Corning can state to Your Honor their disposition, on the theory that no settlement is possible owing to the stalemate we have reached. So as to Corning's rights, I shall have to be somewhat indefinite.

As to Hazel-Atlas' elimination of their participation in the divisible income of Hartford, I can say nothing because that is a matter over which we have no control, and which must be settled, if at all, by a concurrence of Hazel-Atlas and ourselves. As to that I can only say that Hartford is willing and will continue negotiations with Hazel-Atlas' counsel, if they are so disposed to deal with us, with a view to eliminating that point.

With those two exceptions I think we can assure Your Honor that all will be done, all of the steps will be taken voluntarily by us which we mentioned ten days ago in the last conference here. I shall enumerate them generally; not by paragraph, perhaps, as was done the last time. Having done those things, which will be done in advance of trial, we shall submit to Your Honor proof that they have been done; and such action as Your Honor may find proper may then [fol. 898] be taken by way of limiting the issues or otherwise, under Rule 16. This memorandum is a summary of the steps which Hartford-Empire Company has offered to take on the condition of a complete disposition of the case by consent decree prior to the taking of testimony, as stated in the Pre-Trial Conference of September 20, and which Hartford-Empire now proposes to take, regardless of the disposition of the case.

1. Elimination of exclusive rights, so far as Hartford-Empire is able to effect it. I have mentioned Corning. Ball Brothers: we expect to eliminate their residual or semi-exclusive rights. American Thermos Bottle is an exclusive we cannot answer for. If possible we will. Thatcher's right to use a not so good forming machine is one thing we cannot do without their concurrence. We do not regard it of any importance to anybody, excepting, possibly, Thatcher.

Next: the removal of restrictions in licenses. This includes all restrictions and limitations mentioned in the statement of practices complained of by Hartford-Empire, which was furnished by counsel for the plaintiff.

Restrictions upon fields of ware—I am referring now to restrictions which keep the licensee out of fields where we have granted exclusive rights—restrictions upon fields of ware will be removed to the full extent possible after elimination of some or all of the exclusive rights mentioned above.

The next: furnishing additional machines to licensees. We shall follow the suggestions made the last time.

Next: licenses to new applicants. We shall follow the [fol. 899] same policy announced the last time, and stand ready to give appropriate assurance to the court in such form as may be required that that policy will be followed.

Next: removal of restrictive provision in contract with Lynch Corporation, which relates to a narrow neck forming machine.

Next: removal of so-called tying clauses—feeder and former clauses and any others which may exist in old and obsolete types of contracts remaining outstanding.

Next: improvements on leased machinery, made by licensees. We shall change that provision, as was suggested, from a provision that we get ownership to a provision that we get only a non-exclusive, divisible license.

Next: Alleged requirement that licensees shall not contest the validity of Hartford-Empire's patents. If there are any old contracts out which have an unduly stringent clause in, we shall remove that by waiving the excess over the provisions of the present clause.

That brings us lastly to the amendment of agreement with Hazel-Atlas, which I have mentioned.

That is all we can control; that is all that it is within our power to do; that we propose to do; and we shall furnish evidence of the doing to Your Honor for such order as may be appropriate.

The Court: Does government counsel have anything to say?

Mr. Isseks: If Your Honor please, first of all, after the last session I asked counsel for Hartford, in the presence of [fol. 900] counsel for Corning, if they wished to submit a decree along the lines of Your Honor's suggestion. As I recall it counsel for Hartford asked the government to submit a decree. Government counsel spent all of Saturday on it, all of Sunday, most of Monday, most of Tuesday and a good part of Wednesday; and then sent the draft to Washington. On Friday we had a long conversation with representatives of the government in Washington, and revised the draft. The draft was based on our understanding of what Your Honor had in mind. We sent on Saturday to all counsel for the defendants a copy of the proposed decree, including a covering letter, which I now hand to the Clerk for Your Honor's perusal.

Secondly, as we understood Your Honor at the last conference, counsel generally were requested to prepare a statement showing the issues to be eliminated if the decree were entered, and the issues remaining. I have a copy of that memorandum here and submit it gladly for Your Honor's examination, and my associates will be glad to give counsel for the defendants such memorandum.

As we understood it there would be eliminated from the case the alleged combination and conspiracy by Hartford, Corning, Empire, and their respective officers and directors, with regard to the attempt to monopolize and the monopoly in connection with pressed and blown ware, and particularly heat resisting ware, in violation of Sections 1 and 2 of the Sherman Act.

Similarly there would be eliminated the issue of the alleged combination and conspiracy by Hartford-Empire, Owens, Hazel-Atlas, Ball Brothers, Thatcher, and Anchor Hocking, with respect to the attempt to monopolize and the [fol. 901] monopoly in connection with the manufacture and distribution of glass containers, generally, in violation of Sections 1 and 2 of the Sherman Act.

Thirdly, there would be eliminated the alleged combination and conspiracy by Hartford-Empire, Owens, Thatcher and Liberty, in connection with the attempt to monopolize, the monopoly and restraint of trade in connection with the manufacture and distribution of milk bottles, in violation of Sections 1 and 2 of the Sherman Act.

Fourthly, there would be eliminated the alleged combination and conspiracy by Hartford-Empire, Ball Brothers, Hazel-Atlas, Owens, and their respective officers and directors, to restrain trade, attempt to monopolize and to monopolize, with respect to the manufacture and distribution of fruit jars, in violation of Sections 1 and 2 of the Sherman Act.

Fifthly, there would be eliminated the alleged combinations and conspiracies in restraint of trade arising out of the restrictions on the use of the patents licensed, and the machinery leased, by Hartford-Empire Company, in violation of Section 1 of the Sherman Act.

Sixthly, there would be eliminated the alleged use of tying clauses by Hartford-Empire Company and Lynch Corporation in connection with the sale by Lynch Corporation of forming machines, in violation of Section 3 of the Clayton Act.

Seventhly, there would be eliminated the alleged combination and conspiracy to restrain trade and commerce in glass containers through the fixing of prices and the use of [fol. 902] production quotas by Owens, Hazel-Atlas, Anchor Hocking, Thatcher, Ball Brothers, Liberty, Hartford, Glass Container Association of America, and the Stevenson Corporation in violation of Section 1 of the Sherman Act.

Eighthly, there would be eliminated the alleged combination and conspiracy to restrain trade and commerce in glassware by engaging in price-fixing through price leadership by Owens-Illinois, Hazel-Atlas, Anchor Hocking, Thatcher, Ball Brothers, Liberty, and Corning, in violation of Section 1 of the Sherman Act.

The issues remaining, Your Honor, if the decree were entered as submitted, would be whether the defendants Hartford-Empire, Corning, Empire Machine, Owens, Lynch, Anchor Hocking and Liberty, combined and conspired, and are now combining and conspiring unlawfully to restrain trade, to attempt to monopolize and to monopolize, and whether they are now maintaining a monopoly among the several States of the United States with respect to (a) patents on automatic machinery for the production of glassware, and (b) the manufacture and distribution of machinery for the production of glassware, all in violation of Sections 1 and 2 of the Sherman Act.

Reference has been made to a conspiracy to monopolize in the past. Your Honor, I should like to address myself briefly to the pleadings. Paragraph 37 of the Complaint alleges:

> "Defendants herein have conspired, and are now conspiring, unlawfully to attempt to monopolize and to monopolize, and have unlawfully combined and now are combining to restrain trade, and such defendants have maintained and are now maintaining an unlawful monopoly or [fol. 903] unlawful monopolies, and such defendants have, and now are, unlawfully restraining trade among and between the several States of the United States with respect to—

"(a) Patents on automatic machinery for the production of pressed and blown glassware and glass containers;

"(b) Machinery for the production of pressed and blown glassware and glass containers, and the distribution of such machinery;"—&c.

The Court: Does not your whole premise fall? If they did conspire: that is the clause you use in your statement that you have just quoted. If they did conspire, that is a matter of past history, is it not.

Mr. Isseks: They are conspiring, we allege.

The Court: You say they did conspire and are now conspiring. Now if——

Mr. Isseks: That is right.

The Court: If they are willing to enter into a decree in which they agree to refrain from conspiring now or in the future, what satisfaction or step forward is to be gained by the government if you continue to litigate over the fact that they did conspire?

Mr. Isseks: I understand they are not willing to admit that they conspired. All they are willing to do is to take an injunction against a conspiracy.

The Court: You are not asking for any penalties here.

Mr. Isseks: We want to make the record so that Your Honor will understand the basis for the demand of the government, or rather the request of the government that there be some form of reorganization of this Hartford-[fol. 904] Empire Company in order to bring about a competitive situation. Unless Your Honor has before him evidence showing how this developed, going back to 1913, 1916, 1920, 1922 and 1924, there will be no basis on which Your Honor could make a finding that there has been a conspiracy or that there has been a monopoly. The bare statement that they have a bunch of patents would not to Your Honor or to any other Court give any basis for a determination as to whether or not this monopoly should be broken up.

If they are willing to withdraw their answers or amend their answers to admit that there has been a conspiracy, of course the case is over. If they admit that there has been a conspiracy to monopolize, that there has been a monopoly here, and permit the making of a finding of fact, it is perfectly all right with the government. But unless they make an admission of the fact that there has been a conspiracy or that there is a monopoly, the government feels constrained to go ahead. The government is not anxious, any more than anybody else, to burden Your Honor with any proof.

The Court: You say there is?

Mr. Isseks: We allege it.

The Court: How about "has been"? How about the use of the past tense?

Mr. Isseks: We allege that they have conspired and are now conspiring. We shall prove they are now conspiring. That is our obligation to the court.

The Court: They are willing to take a decree to the effect that they will refrain. They have now.

Mr. Isseks: They admit they have conspired?

The Court: Yes.

[fol. 905] Mr. Isseks: I never heard that.

The Court: They admit they are now conspiring.

Mr. Isseks: Will they admit they have conspired?

The Court: I cannot answer that.

Mr. Isseks: Will they admit they have conspired?

The Court: I know their statement is that they will agree to refrain from conspiring.

Mr. Isseks: What is before Your Honor on which you could make a finding or issue an injunction that they shall refrain unless there is some finding of fact? They will not admit that they have conspired, let alone are conspiring. If they will admit they have conspired, we shall put in evidence that they are now conspiring. Unless there is a basis for a decree and finding of fact, the government feels constrained to go ahead.

I should like to direct myself to the question of cooperation. I and my associates have been here since September 5. We have spent three days preparing for trial since September 5. The rest of the time we have spent furnishing the defendants information, giving them a summary of practices, and preparing this decree which took five or six days. We have conferred with them at length.

We too would like to sit down and prepare for trial. We unfortunately have the burden of moving forward at the beginning of the case.

While we have made every effort to cooperate with counsel for the defendants, and they have in fairness tried to make an agreement with us, we have failed to get together on a total disposition of the case. Unless there is an ad-

[fol. 906] mission of some kind on the part of the defendants with regard to the issue of conspiracy, past or present, the government feels obligated, based upon various decisions of the Supreme Court, to furnish evidence to the court to show that there was a conspiracy which resulted in the present monopoly, and that there is a conspiracy to-day.

As Your Honor knows, you cannot prove it by any motion pictures, or by any tapped wires if you could put it in, when these defendants got together and when they did not. Your Honor will have to rely upon documents, inferences, and the existence of various restrictions, as to the existence of a prior conspiracy and a present conspiracy. It is true that we shall have the burden of proof, and we assure Your Honor that we will fulfill that burden of proof.

[fol. 907] Mr. O'Brien: May it please the Court, I wish to state on behalf of both Corning and Empire Machine Company—perhaps I had better speak first for Empire Machine Company—I stated on the last occasion what both companies would be willing to do—so far as Empire Machine Company is concerned, apart from these injunctions which it is willing to accept, the only question is whether it should be obliged to divest itself of its ownership of Hartford-Empire stock. That company, which was originally an operating company, many years ago ceased to be such. It is just a holding company, of people who originally held some of this Hartford stock, and stock which also came to the Empire Machine Company under a contract of 1922. I think that can be worked out. However to compel a sale of the stock would involve not only tax penalties, but tremendous tax penalties.

The government has been very fair in its attitude toward that question. We have suggested that this Empire Machine Company be placed under an injunction as to all but twenty per cent of its stock, that is, forbidden to vote more than twenty per cent of the Hartford stock at any time; and that it be given a period of ten years in which to gradually sell the stock. Mr. Isseks has not quite agreed to that. He thinks that we should have all stock under injunction, and not just the twenty per cent. But I lay that aside because, as Your Honor can see, reasonable men ought to be able to work that out.

I wish to say I have no fault to find with the government negotiations in a matter of this intricacy and having these unique problems. It is very difficult. Afterthoughts arise growing out of the unique patent situation. I am satisfied everybody has done his best here; we have, really, despite [fols. 908-923] apparent differences, what seem to be apparent differences. We are pretty close together.

In my viewpoint the one obstacle nobody has mentioned yet, the one obstacle looming up is not the question of what Hartford will do or Corning will do, but the question of what the court will decide to do about the Hartford-Empire Company. That is a matter of judicial discretion.

Before I proceed, may I say a word to reiterate what I said about Corning's attitude? If this case can be wholly settled, Corning will cancel its contracts of 1916 and 1922. Negotiations have already, since we met last, been practically concluded between Corning and Hartford for the sale and transfer back to Hartford of these heat-resisting rights, so-called. That is a very large matter. The volume of Corning's heat resisting business is about four million dollars a year. If the case were wholly settled and disposed of without trial, it would result also in the removal by Corning, transfer to Hartford and surrender by Corning of Corning's restrictive rights on Hartford machines which prevent them or some of them being used for the manufacture of bulbs. So those two great fields will be thrown open. Corning will then accept the same license from Hartford that everybody else accepts and be on an equal footing with everybody else.

That completely satisfies not only the literal allegations of the complaint, but even including bulbs, tubing and cane, so far as they are involved in these two contracts. And that, I think, as the other defendants said, is a concession of tremendous value.

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[fols. 924-957] I do not want to talk about the uncertainties of the times we are in because I do not want to get into the field of jury talk in this statement of mine. We all admit we are in very uncertain times. There are dark days ahead. This is not a great industry. It is great in output. But it is not enormous in its arrangement. We are saying we are here to accept every injunction that will open this industry, so far as it can be opened, it being a patented industry, on equal terms to all. We say if we do that in all fairness; and if Corning and Hartford conclude these negotiations and Corning sells these rights back to Hartford, as is now contemplated; then we ought not to be faced with a wholly novel experiment. In the public interest we should be allowed to go along under the scrutiny of the court; under the observation of the Attorney General with power in him at any time to come in and ask for such further decree. We think that that would be a reasonable solution.

* * * * * * *

[fol. 958] The Court: I think counsel on both sides feel by this time they have pretty well elucidated to the court the [fol. 959] efforts which have been put forward since the last meeting toward a settlement of the difficulties here. The court knows nothing about what has been going on, and hence the court is not prepared to state anything more than he is now stating.

The court believes that honest and serious efforts have been made here to settle these difficulties. But he is never willing to give up. He believes there is still opportunity within the next ten days to close the gap. There is always some hope, always some opportunity for the minds to meet; and the court is hoping that if the gap cannot be entirely closed, certainly some arrangement within the provisions of the rules can be arrived at whereby the things that are no longer in issue can be eliminated.

I say that perhaps from a selfish standpoint because I have never experienced as busy a season so far as I have experienced in the past few weeks, what with criminal trials, corporate reorganizations, and a thousand and one matters that have come up from day to day to take the time of the court. I have had no opportunity to do many of the things that are necessary to be done here. I am beginning to get inquiries about cases from other litigants, who are wondering why the usual fall session is not taking place. Whether the court can devote beyond the Christmas Season of this year, the 21st of December, to this issue is quite a question; so that if we enter into the trial of the case in toto, of all the issues, we probably face the proposition of working from the 15th of October until the 21st of December, and then recessing to possibly the first of April.

[fols. 960-968] The court cannot do otherwise as the criminal session begins in January; also he must spend a couple of months in the trial of civil jury cases, a class of cases with which this Judicial Division abounds; or he is hopelessly lost.

Counsel of course have made a very serious effort to assist the court and at the same time assist their clients in disposing of unnecessary time in litigation. I am hoping that this effort might be continued during the next ten days, so that we may eliminate, if not everything, most everything.

I do not know. I have looked upon the rule with reference to pretrial conferences more or less as an opportunity for a volunteered meeting of the minds. And I don't know that there is anything in that rule that would permit the court to do something that the contesting parties themselves are unable to agree to do. Mr. Wall, I believe, has suggested that that rule might contain some authority in the court to act of his own accord. I want to look into that. It may be true. But so far in these pre-trial procedures, I have handled them from the standpoint of creating an opportunity through counsel for a discussion of a voluntary agreement.

Have counsel any further suggestions at this time? Is there anything further the court can do now or that counsel can do now?

* * * * * * *

[fol. 969] Mr. O'Brien: May it please the Court, in addition to these motions, I desire to make a motion for leave to file an amended answer on the part of Corning and Empire, setting up what I have already stated to the court would be done, namely, cancellation of the contracts, plus liberating the restrictions. I had intended to ask for an order to show cause for this; but through a misunderstanding on my part I did not fully inform Mr. Isseks of the nature of the motion. It is a motion for leave to file an amended answer, instanter, and for judgment on the pleadings, with a memorandum. He is entitled to notice under the rule. I am perfectly well aware of that. But I had assumed from my conversation that he understood that.

The Court: Does counsel for the government have any objection?

Mr. Isseks: Your Honor, I was handed this morning,—not a motion to amend, which was the understanding counsel [fol. 970] for the government had, but a motion for leave to file a supplemental answer, and for judgment in these proceedings in the form of a decree presented by their answer.

Counsel for the government has no objection to counsel for Corning filing a supplemental answer alleging any facts which have taken place since the filing of the original answer; but counsel do vigorously oppose any judgment on the pleadings. Under the rules we are entitled to notice. As a matter of fact, Rule 12 specifically provides any motion for judgment on the pleadings must be made within such time as not to delay the trial. Your Honor set this case for trial this morning, six or seven months ago—at least for October 1st—and the government takes the position that the motion is untimely and improper.

We do not have any objection to the filing of a supplemental answer, Your Honor. We consent to that right now.

Mr. O'Brien: In order to bring before the court the proposed consent decree on our part, I am accompanying the motion for a supplemental answer with a motion for judgment in substantially the form of the decree. Corning and Empire are in a peculiar situation in this litigation. I am not going to argue in advance; simply pleading to the court for an order to show cause, fixing a shorter time. The reason I could not file the answer until today was that these cancellations had not been completed until today. They had been subject to considerable negotiation, as Your Honor is aware. I have stated that several times.

I simply want to present the case of my client in that form. The complaint against Corning and Empire is, aside from this general conspiracy charge, that Corning had a monopoly of heat resisting glass arising out of two con- [fol. 971] tracts. This supplemental answer states that those contracts have now been canceled; that neither Corning nor Empire has any preferential situation whatever in the industry; and that Corning will have no license except that which may be determined as uniform with everybody else. That is a matter of vital importance to everybody in the case. That is covered by the supplemental answer, to which Mr. Isseks says he has no objection—to the filing of which.

All I am asking in addition is for a motion for judgment on the pleadings. The court may deny it. The motion is made on the ground that that substantially takes out of the case all of the issues relating to Corning and Empire, leaving only the question of what remedy should be applied. They consent in this answer to being restrained.

I do not want to get in the way of the other proceedings this morning by arguing at length at this time; but if Mr. Isseks desires time on it, I will be very glad to apply to the court for an order to show cause and, if the court will indulge me, present it tomorrow morning. I was under the impression from my conversation with Mr. Isseks—I see now that it was mistaken—that I had explained to him that this was a motion for leave to file an answer and a motion for judgment; but he calls my attention to the fact that he did not understand it was for any judgment and that it was not mentioned. It was one of those misunderstandings between counsel which are wholly innocent and unfortunate.

Mr. Isseks: The only conversation I recall happened to be in the presence of Your Honor. My recollection is that there was conversation about filing a supplemental answer, [fol. 972] to which the government accedes willingly. Now to talk about a judgment under the pleadings, under the rules the motion is untimely and improper. Any application for an order to show cause is also improper at this late stage. The case is ready for trial and witnesses are in the courtroom prepared to take the stand.

The Court: I do not like the idea of further delay. That is what this motion entails if the court permits it to be filed and given consideration.

Mr. O'Brien: May I defer my request until the completion of the other motions? I don't know that any question here presented is in essence any different from the other motions.

The Court: I had anticipated from what counsel said in chambers the other day they would file a supplemental answer.

Mr. O'Brien: Yes.

The Court: But I did not anticipate that these defendants would file motions similar to the motions that we are now about to consider. If that is permitted to be done, it will mean further delay.

Well, we will proceed with the other motions at this time.

Mr. Wall: May it please Your Honor, Hartford-Empire, at the conclusion of the hearing of the other motions, will suggest to Your Honor an order which I think can be made by the court on its own motion, although we will move for a limitation of the issues, and will present in draft form a decree which we would be willing to consent to having entered immediately.

Mr. Isseks: These purported motion papers were also served on counsel for the government shortly after ten o'clock this morning, in the courtroom. As to those papers [fols. 973-1005] I have had no opportunity to see them. I understood from the colloquy in conference with Your Honor and counsel for Hartford, on Friday, and my associates, that we would see those papers some time Saturday or at the latest Monday morning. There were some other papers shown me last night, and I understand those matters are not being pressed here, so we will not talk about them. As to the papers served this morning, the government has not seen them and does not know what is in them. We shall be willing later in the morning to give Your Honor our views as to how the government feels about those particular documents.

The Court: Let us proceed then with the motions on hand.

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[fol. 1006] Mr. Fess: If Your Honor please, on behalf of the defendants Lynch Corporation and its associates, I recognize that after three such able presentations I may not be able to throw any particular additional light on this subject; but there are one or two things I should like to call the court's attention to with respect to these particular defendants.

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[fols. 1007-1036] Lynch Corporation is further charged with a violation of the Clayton Act by reason of entering into a certain contract back in 1933 in connection with the settlement of four or five years of protracted patent litigation, involving a patent which involves the very life-blood of that particular business. It entered into that contract as a practical business solution and a termination of litigation which had caused it an expense of some $250,000. By reason of that contract it is charged in the complaint that there was a tying clause—which as a matter of fact was an indirect tying clause—that is all—which caused them to violate the Clayton Act.

Lynch Corporation and Hartford-Empire, in an effort to reach a decision and solution of that matter, have recently entered into a new contract which has eliminated all such tying clauses. That is not perhaps pertinent today, other than an indication of our effort to try to get out of this expensive, protracted litigation. By the way, that new contract will cost Lynch Corporation a considerable sum in connection with royalties that will be paid, which leaves it free to sell at will under the contract.

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[fol. 1037] Mr. O'Brian: I do not want to get wound up in technicalities. I shall not mention any rules, am not [fol. 1038] going to cite any cases, to Your Honor; but I take it that what we are engaged in here, as we were on the former pre-trial conferences, is to endeavor to get the issues in this case, if possible, into a narrower compass for the trial so that, whether it is done by summary judgment or consent decree, or by the court making an order, or the admissions of the parties, the result may be the saving of labor for the court and for counsel. I have in mind a very pertinent question you asked this morning, namely, how can this court at this time make an order granting judgment here or limiting the issues? This answer I have filed bears specifically on that question, and, with your permission, I should like to say just a few words about the effect of it. It throws light on that query as it affects us and the other counsel. Your Honor will recall on the pre-trial conference Hartford filed with Your Honor a statement of what it proposed to do, and I made an oral statement of what I proposed to recommend. I in this answer have gone much beyond that. At that time Mr. Isseks filed with Your Honor a statement of what he understood would be eliminated from the case if Hartford did those things. That seems to have been entirely forgotten today.

Applying myself solely to Corning, Mr. Isseks said, during the time that Mr. Wall, I think, had filed and given Mr. Isseks a copy—I am reading from Page 11 of the record—if Hartford did those things:

"As we understood it there would be eliminated from the case the alleged combination and conspiracy by Hartford, Corning, Empire, and their respective officers and directors, with regard to the attempt to monopolize and the monopoly in connection with pressed and blown ware, [fol. 1039] and particularly heat resisting ware, in violation of Sections 1 and 2 of the Sherman Act."

Then he went on to say that the issues that would be left would be the issues, Your Honor will recall, as to the charge of monopoly of glassware and patents on machinery.

Proceeding on that basis, Corning has now considerably broadened its possessions, and by arrangements which I have already explained to Your Honor and Mr. Isseks, have brought about a cancellation of the two contracts under which Corning received the rights that were complained of in the complaint. So the case, as it now stands before Your Honor, presents very sharply a question of how the issue is to be narrowed, leaving aside now summary judgment.

The answer in this case says in substance that these agreements have now been terminated; that they are the only agreements complained of in the complaint as between these two parties; that Corning now has no exclusive license under any Hartford patent; that this cancellation removed all restrictions resulting from the provisions of any license granted to Corning by Hartford or to Empire; that they have no preferential position; and that they are ready to here consent—this is the answer I am reading—submit to such decree of the court as may be appropriate and necessary to preserve the presently established status of the parties. Annexed to the answer and made a part of it is a short proposed consent decree which consents that Corning and Empire be enjoined; and that the two charges in the complaint—the main charges against Corning were heat resisting ware monopoly; and the charge that certain individuals, officers of Corning, through their control of [fols. 1040-1042] Hartford-Empire, controlled Hartford-Empire—the parties are willing to accept a sweeping injunction as set forth in this proposed consent decree and made part of the answer which will effectually restrain all these defendants from attempting to exercise control or to influence in any way the licensing policies of Hartford.

In short this answer brings up very sharply and clearly before the Court the dilemma which we are all in. If this answer correctly states the facts, and I am perfectly willing to demonstrate that to Mr. Isseks—that these contracts have been canceled; that Corning and Empire Machinery Company consent now to the imposition in substance of such sweeping injunctive relief as will comply with the requests of the complaint, the only thing they do not go into is the question whether Empire should divest itself of Hartford-Empire stock.

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[fol. 1043] Mr. Wall: I should like to state, if Your Honor please, the position in which we find ourselves, which is rather close to that which Corning has stated as its own. We are not here with any motion for judgment. We are not here with a motion for the entry of a decree which will terminate the case as to us. We do suggest to Your Honor that, without that, the Court can, of its own motion, upon the concessions made here, limit the issues under Rule 16. We do suggest also that with the motions for judgment, under Rule 56 (d), the Court, if it finds the motions not well [fols. 1044-1189] taken in their entirety, may accomplish substantially the same result under Rule 56 (d) by winnowing out such parts of the case as are not in controversy, and narrowing the case to those which are. Procedurally, we are trying to reach that end, which has been the aim, so we understand, of court and counsel on both sides since the inception of these pre-trial conferences. We are trying a slightly different procedure in following it than Mr. O'Brian has, but with the same thought in mind.

What we would like to offer to Your Honor for Your Honor's guidance, in case you see fit to make any rules upon a narrowing or limiting of issues, is the affidavit of Mr. Smith to the doing of certain things. We have already told Your Honor what we planned to do and would do before trial, as a suggested draft of order narrowing the issues, and a suggested draft of a consent decree which could be entered and which we would consent to have entered against us at the outset.

We have no pendulum on that, no request that we be dismissed. We appreciate the fact that after negotiations with government counsel, we have been unable to compose our differences here. We have thought, with the showing made by the affidavit, supplemented especially in connection with Corning's showing, that much of the case has become moot. We do not even ask that our showing be accepted as final.

We are willing to go farther and to meet the government on its claim that there should be an assurance against any repetition of these practices; and it is for that reason that we tendered to Your Honor a draft of decree which we think can be safely entered at this time without prejudice to the government in any way.

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[fol. 1190] The Court: Gentlemen, what is the situation this morning?

Mr. Sayles: If Your Honor please, on behalf of Corning and Empire and associate individual defendants, I must move this court for a continuance on account of the fact that Mr. O'Brian, on whom we relied entirely for the trial of this case, has been called to Washington, as Chief Counsel of the National Defense Commission. He is the only one who has prepared for the trial of the lawsuit. When he first notified us that he was going, which was last week, we naturally were very much disturbed. But he said that [fol. 1191] he had the assurance of the Attorney General that we would be given time to prepare.

Now it devolves upon me to try this case. I have not read the files. When I first knew that he was considering this matter, I started as best I could; but since then we have been almost all of the time working on the attempted settlement, and I find myself to-day without having read the files at all.

The Court: Is there any reason, Mr. Sayles, why the government should not proceed to-day with the trial of the case and put its case on? Is it necessary for you thoroughly to study the matter prior to the entering of the defense?

Mr. Sayles: I thought so, Your Honor. I thought it unfair to my clients. I don't know whether any motions should be made ahead of any taking of any testimony.

The Court: I don't think the court would entertain any motion now.

Mr. Sayles: I don't think anything is to be gained by taking just a little testimony to-day. The only effect it could have would be upon negotiations; and the Attorney General and the government do not have to have any negotiations unless it will——

The Court: While you are mentioning negotiations—what is your situation? You seem to take the attitude that the case is going to trial. Does that mean you have abandoned all negotiations?

Mr. Sayles: I hate to ever abandon negotiations; but as far as my clients are concerned, I could not assent to [fol. 1192] a consent decree on Plan A at the time, on account of the reasons I sketched to Your Honor yesterday when you were good enough to give me the time.

The Court: Let me have those reasons again. I should like to know them.

Mr. Sayles: I am not very well prepared; but they are these: In the complaint, I think, and in the specifications as to the alleged wrongs we did, was the formation of the 1922 contract between Corning and Hartford-Fairmont, and Hartford-Empire and Empire.

The Court: Has that contract not been cancelled?

Mr. Sayles: Yes. And they wish to resurrect in this Plan A rights that passed when that contract was cancelled. In other words, although they have taken the exclusives we had under that contract in hard glass and such as that, they wish now to compel us to grant under machines which were our own inventions rights which are cancelled by the cancellation of that contract. They have asked us, long since we cancelled that contract, on the part of some of the licensees, at the request of some of the licensees, that we grant an unrestricted license on these machines which have never been used in the container field at all. Corning Glass Works does not make containers in the general sense of the word. They have machines on which they make bulbs, laboratory ware, and such as that. They are asking that we resurrect the 1922 contract long enough to take what they please from it, and then kill it again.

We complied with the request. We did it with the knowl- [fol. 1193] edge of the government that they have asked us for what we think is very unfair. These rights were never used by Hartford, and, as far as I believe, they never can be used. They have asked us, although the whole——

The Court: They have been used by Corning?

Mr. Sayles: Not in the container field, sir.

The Court: What field have they been used in?

Mr. Sayles: They make bulbs, sir. And that is not in this lawsuit. In fact there is another lawsuit that has just been brought against Corning involving this machine.

The Court: Your apprehension, is, then, that these machines, if included in this agreement and placed in the hands of the Institute, might be used in competition with Corning, is that it?

Mr. Sayles: That is my position. In fact, if Your Honor please, this whole suit seems to be mostly to remove restrictions in licenses. You remember that Hartford granted licenses to some defendants to make milk bottles; some other defendants, to make beer bottles. I am not very familiar with it. But they could not use Hartford machines for other purposes. We, Corning, had the exclusive right to use the Hartford machines on hard glass.

The whole drive of this lawsuit was to do away with exclusives and with restrictions. They said Hartford must not say to Thatcher that it could make milk bottles, and to somebody else that they could not make milk bottles. That is the lawsuit, as I understand it. And that has been already accomplished by the government. That is the main [fol. 1194] thing that Hartford did that is wrong.

Right on top of their position in this lawsuit and what they made us do already in this lawsuit, they have asked us, Corning, to give on our machine which has never been used for containers a restricted license. Does that mean later on they will attempt to remove the restrictions in that license? Maybe not. Very likely the government will stick to its word. There is no question about that. But suppose somebody else gets this machine and starts making bulbs? Our inventors invented these machines. We did not acquire them from anybody. We have been using them in our field. There is nothing to prevent any glass manufacturer from making bulbs. The patent law of the United States does protect Corning in the use of Corning's own machine in making bulbs. The only reason they make a lot of the bulbs used in this country is because they can make them cheaper and sell them cheaper.

That is my position; first, that it is very unfair; second, that the government is very inconsistent in its demand; and third,——

The Court: Is the government demanding anything here?

Mr. Sayles: I understand in the consent decree there is a provision that gives rights under these machines, our own machines, to the Institute.

The Court: I thought I understood you yesterday to say that those demands and the withholding of those demands are upon the part of the Institute and Corning?

Mr. Sayles: I was informed by Mr. Isseks yesterday [fol. 1195] afternoon—is that not right, Mr. Isseks?—that it was now a demand of the government.

Mr. Isseks: If Your Honor wishes me to address myself to that point, I shall certainly be glad to. On this question of this contract between Corning and Hartford, while it is true that the government took the position in the early stages of all the negotiations, and in conferences with Your Honor publicly and privately, that the 1916 and 1922 contracts should be cancelled, we never authorized the cancellation of the contract. I want to make that clear. They cancelled the contract without notifying the government or the court. They cancelled the contract under an arrangement for the payment of a fabulous sum of money from Hartford to Corning, which was not mentioned here; and they cancelled the contract depriving the rights of other people, such as Owens and Hazel-Atlas, whom we understand have specific rights under certain Corning patents under their licenses, and Hartford had rights which it could give to the licensees.

When we were working over a draft of this decree, I and my associates, Mr. Apsey and Mr. Kramer, we put in the draft language which has been in the draft for eight weeks:

> "(B) Defendant Corning Glass Works, its directors and officers, be and they are hereby directed to grant forthwith to Glass Institute, Inc., licenses in all respects identical to those granted defendant Hartford-Empire Company under article IV, sections 14 and 15 of said agreement of October 6, 1922, between Hartford-Empire Company, Hartford-[fol. 1196] Fairmont Company, Empire Machine Company, and Corning Glass Works which is hereby cancelled."

Our positions and negotiations have been that if the Licensees' Committee wants it, the government is for it; and that is the position we took last night; if the Licensees' Committee wants it, the government is for it.

I should like to defer any other comment on some of the statements made by Mr. Sayles.

Mr. Sayles: I wish absolutely to contradict the statement that it was made without notifying the court. It was set up in the supplemental answer that was put in by Hartford, and in the supplemental answer that was put in by Corning and Empire; and it was made, as counsel says, on the demand that they at all times had urged, up to very recently, that this be cancelled.

They have not been consistent in this thing. They have taken away from us already the licensees which use the Hartford machine in making hard glass. They are willing to take everything we gave by the cancellation. And then they wish to hold what we gain by the cancellation.

This amounts to very little to the Institute; but there is a principle involved in the thing; and I don't think that—I know I have no right to assent on behalf of my clients.

If Your Honor please,——

The Court: That is the main obstruction now?

Mr. Sayles: I think that is the main. I am afraid so. I am sorry. I wish very much I felt differently.

The Court: Then you have given up any hope of arriving [fol. 1197] at any conclusion?

Mr. Sayles. Along those lines, sir.

The Court: And are ready to try the case?

Mr. Sayles: I think that if the licensees knew how little it meant to them——

The Court: You have argued that over with them, have you not, in the last few days?

Mr. Sayles: Yes—of course you say argued it over with them—if Your Honor please, yes, we have argued with Mr. Gottlieb and Mr. Murnane. They are not engineers. They are not glass men. The licensees are a great number of men, a great number of corporations. We have not of course been able to contact them. I don't know whether there is any chance or not. I don't know but that there may be some other schemes that may come up. I don't know. That is the trouble with me in this lawsuit: I don't know.

Your Honor must appreciate that Corning relied absolutely on Mr. O'Brian. Mr. O'Brian had had great experience, had been in the government, and knew these anti-trust cases. When he came to them and said that the government had drafted him, Corning was in a predicament. You can appreciate that. They had relied upon him. He is the only one that had gotten the preparation together, he and his associates, and he was going to try this case if it was tried. We were working all of the time towards a settlement.

But when he came to us—I don't think he would have taken our advice—but when he came to us and asked us what we thought about his going to Washington, what could we say, in times like these? If Your Honor please, prob- [fol. 1198] ably the most important thing in the world is this Defense Commission and the speeding up of production. They asked for him. Mr. Knudsen, Mr. Knox, and those men asked for Mr. O'Brian. The Attorney General himself, Mr. Jackson, knows Mr. O'Brian, and knows that Mr. O'Brian has been in the Attorney General's Office; so there was centered on him an experience which was invaluable. Everybody had confidence in him. What could we say? What could they say? What could Mr. O'Brian say? It is a great sacrifice to him.

But Mr. O'Brian said, "I perceive the predicament I am leaving you in, but I will ask the Attorney General"—and as Your Honor knows, I think from Mr. Isseks, that the Attorney General said that as far as he was concerned, he would ask this court that I be given just thirty days to prepare in this lawsuit; and that nothing be done until that thirty days has expired.

It probably is an inconvenience; but it is an inconvenience brought about by the situation that the world is in to-day. I think that in this lawsuit, important as it is, it is more important that Mr. O'Brian has gone to Washington.

All we ask under those circumstances is that I have just thirty days to prepare myself. I am utterly unprepared.

Mr. Isseks: If Your Honor please, I received yesterday from Mr. Thurman Arnold, Assistant Attorney General of the United States, the following communication:

> "You are hereby directed to consent to the postponement of the beginning of the trial of the equity suit against [fol. 1199] Hartford-Empire et al for a period not to exceed thirty days. This is in accordance with the agreement which I made with counsel to permit Corning Glass Works a reasonable time in which to obtain new counsel."

I talked with Mr. Sayles after I got this communication. Your Honor will recall we had some colloquy in Your Honor's Chambers. The new counsel is Mr. Sayles. There will not be any application made by any other counsel. If I am wrong, Mr. Sayles can correct me.

Mr. Sayles: You are right.

Mr. Isseks: Secondly, I point out that the supplemental answer filed by Corning did not state the terms of the cancellation agreement; did not indicate that there was this very large sum of money paid by Hartford to Corning; did not indicate that the rights of people who were involved, namely, people other than Corning and Hartford, were being affected; and it is my humble opinion when this case goes to trial, if it does, Your Honor will conclude that the cancellation agreement is just as illegal as the original agreement.

We for the first time saw that contract I believe on December 16, or shortly before Christmas. We asked for it from the time the supplemental answer was filed, which I believe was on October 15, until then, and they refused to show it to us unless there was some settlement of the negotiations.

I should like to point out some other things. There was an alternative plan submitted to the government on January 30th, pursuant to the direction of Your Honor here on January 28th. That alternative plan was unacceptable to [fols. 1200-1209] Mr. Arnold and other counsel for the government, and we notified counsel for Hartford on the morning of January 31st.

On February 10th, Monday of this week, government counsel received a letter from counsel for the Licensees' Committee. They pointed out that there were some differences of opinion with Corning, Hazel, Hartford, Owens, Ball and Lynch. At a conference in Toledo on Monday, the government canvassed what the differences were. We found out from other counsel that the differences with Hartford, Owens, Ball and Lynch could probably be worked out. If I am wrong in my statement, counsel here can stand up and correct me. I was told, however, that there was a fundamental, insuperable obstacle between Corning and the Licensees' Committee, and between Hazel-Atlas and the Licensees' Committee. With that understanding the conference broke up.

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[fol. 1210] Mr. McCallister: May I say a word, Your Honor? In listening to Mr. Philbin, I must say that Ball Brothers is in a very sympathetic attitude. We have indicated to the Licensees' Committee, and we have indicated to the government, that there are no insurmountable obstacles between Ball Brothers and a settlement of this case. There are many things that we do not like. But I am going to be brief in saying this, that I think the entire obstacle that now stands in the way of Hazel and Company is the Institute Plan; that is to say, there seems to be the theory on the part of all of us that there is only one way to settle this case, and that is by way of the Institute Plan.

I do not agree to that. Ball Brothers feel, as I do, that there are many ways in which justice can be done, if there has been an injustice done on the part of these defendants. [fols. 1211-1220] There are many ways in which that situation can be righted, without compelling the government to take the inconsistent position that the government is taking in connection with this Institute Plan.

The government, as Mr. Philbin has pointed out, objected to certain practices in connection with patents. One of those practices, which was fundamental in connection with the government's complaint, was that Hartford was using a writ of replevin for the purpose of bolstering up a weak and dwindling patent situation. Now the Institute Plan has compelled the government to go on the side of Hartford and advocate ownership of all machines by the Institute. Why? In order that a weak and dwindling patent situation may be bolstered by writs of replevin.

When Ball Brothers took their license under the Hartford-Empire patents, they refused to be placed in that position. Since 1933 we have constantly adhered to that principle. And now we are objecting. As I say, it is not a fundamental objection, that is, it is more or less a matter of principle. But we are objecting to the government and the Institute forcing upon the industry a situation where a writ of replevin takes the place of a patent monopoly. I feel and Ball Brothers feel that it is not a good economic situation which places in the hands of any organization the power over the industry that the writs of replevin will place in the hands of this Institute.

[fol. 1221] IN UNITED STATES DISTRICT COURT

Trial Transcript

The Court: Is the government ready for trial?
Mr. Isseks: Yes, Your Honor.
The Court: Is the defense ready for trial?
Mr. Wall: Yes, Your Honor.
The Court: Proceed to call the witness.

Thereupon, the government called as a witness,

F. Goodwin Smith, who, being duly sworn, testified:

Direct examination.

By Mr. Isseks:

Q. State your name, please?

A. F. Goodwin Smith.

Q. Mr. Smith, you are president of the Hartford-Empire Company, are you not?

A. I am.

Q. How long have you been connected with the Hartford-Empire Company?

A. I joined the Hartford-Fairmont Company in 1915. When that company merged and the Hartford-Empire was formed, I continued with them.

Q. In what capacity did you go to the Hartford-Fairmont Company in 1915?

A. General manager.

Q. How long were you general manager of that company?

A. Until it was merged into the Hartford-Empire Company. I think the Hartford-Fairmont and Empire Company got together in 1922. I was then elected a vice-president, and in 1927, I think, I was elected president of the Hartford-Empire Company.

Q. Were you general manager as well as vice-president during the period you were vice-president?

[fol. 1222] A. I may have been for a time. I have forgotten just how long.

Q. Since you have been president, you have not been general manager?

A. No sir.

Q. You have been acting head of the company?

A. Right.

Q. When you become associated with Hartford-Fairmont Company in 1915 who was the president of the company?

A. I think the title, nominal title, was held by Bartlett Arkell.

Q. Who were the other executive officers in 1915?

A. Mr. Heintzelman, president of the Monongah Glass Company, I think was vice-president of the Hartford-Fairmont Company; and I think, but I am not sure, that the secretary of the company was Mr. Lipe, who was an officer of the Beech-Nut Packing Company.

Q. Was Mr. Herbert Knox Smith associated with the Hartford-Fairmont Company at the time you first became associated with that company?

A. He was not.

Q. When did Mr. Herbert Knox Smith first become associated with the Hartford-Fairmont Company, while you were connected with it, to your best recollection?

A. I could not tell you the exact date. Mr. Smith after returning from Washington had a law office in Hartford; and then he went and took a position with the government during the World War; and I would say that after the war, right after the war, Mr. Smith gave us part of his time.

Q. Was Mr. Herbert Knox Smith at any time an executive officer of the Hartford-Fairmont Company?

[fol. 1223] A. Yes, I think he was secretary.

Q. Was Mr. Herbert Knox Smith at any time a director of the Hartford-Fairmont Company?

A. I think he was.

Q. What is your best recollection as to whether or not Mr. Smith was a director of Hartford-Fairmont Company when you first became connected with it in 1915?

A. I would say he was not.

Q. But he became a director later on.

A. Yes sir.

Q. Approximately when to your best recollection, please?

A. I think he became—I am not sure—I can't tell you whether he was a director of the Hartford Fairmont Company or whether he became a director of the Hartford-Empire Company. The record is there. I simply have not looked it up.

Q. When the Hartford-Empire Company was organized, you said you became vice-president?

A. Correct.

Q. Did Herbert Knox Smith become an officer?

A. I think he became secretary of the company.

Q. And also a director?

A. I think so, yes.

Q. You say you think so; you always mean that is your best recollection when you say that?

A. That is right.

Q. In 1915, when you first became associated with Hartford-Fairmont Company, what was the nature of its business?

A. The Hartford Fairmont Company was organized in [fol. 1224] 1912, by three groups of people: the Monongah Glass Company, the Beech-Nut Packing Company; and a group of engineers in Hartford, Mr. Honiss, Mr. W. A. Lorenz, Mr. Edward Lorenz, and Mr. Karl E. Peiler. Those three groups started to investigate the glass industry in 1911, I think; in 1912, formed this corporation to develop automatic means of producing glass jars for the Beech-Nut Packing Company. They had spent a year or two in investigating the general conditions in the glass industry, and the patent situation in the glass industry; and by the time they asked me to join the company, they had developed an automatic feeder called the paddle feeder, which feeder fed automatically glass from the tank to a forming machine.

Q. At that time, Mr. Smith, I mean the time you became associated with it in 1915, did the Hartford Fairmont Company have any licensees?

A. Well, at that time, in the latter part of 1915, one of the feeders, if I remember correctly, was shipped to the plant of the Monongah Glass Company; and it had always been understood that the Monongah Glass Company would become a licensee, although I cannot tell you whether the papers were actually signed, and would have the use of those feeders for pressed ware. So that I would say there was a licensee already established.

Q. Were there any other licensees?

A. I don't remember any other ones.

Q. To your knowledge, at the time you became associated with the Hartford Fairmont Company, was there any other manufacturer of or patent holding company of automatic [fol. 1225] glass machinery in the United States?

A. The only automatic means for producing glassware at that time was the Owens automatic suction machine; and the rest of the industry was a hand operation.

Q. To your knowledge, Mr. Smith, did the Owens Company in 1915 have any licensees of the Owens automatic suction machine?

A. I think they did, but I am not sure.

Q. You recall, do you not, that the time came in 1916 when the Hartford Fairmont Company entered into a written agreement with the Empire Machine Company?

A. On the question of interferences.

Q. Did you have anything to do with the negotiation of that contract?

A. I did.

Q. Who besides yourself on behalf of the Hartford Fairmont participated in the negotiation of that contract?

A. I don't know as I remember. I think——

Mr. Middleton: May it please Your Honor, I don't know what contract exactly is being referred to; but I wish to go on record as objecting to the question and testimony with respect to any contract to which Owens Illinois is not a party, for the reason that it would not bind Owens Illinois, and it would be inadmissible in these proceedings so far as Owens Illinois is concerned. I therefore object to the testimony with respect to Owens Illinois.

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[fol. 1226] The Court: The objection will be overruled.

Q. My question was, Mr. Smith, whether you recall whether any one else besides yourself participated in negotiations leading up to the contract between Hartford Fairmont and Empire Machine?

A. I assume there were other people, but I cannot tell you who they were.

Q. Do you recall who participated in the negotiations on behalf of the Empire Machine Company?

A. Mr. Falck.

Q. Any one else?

A. I can't tell you for certainty; probably their attorney.

Q. For the sake of the record, the contract of 1916: did Hartford Fairmont Company subsequent to that date, and prior to the date in 1922 which we will come to later on, have any licensees under automatic machinery?

A. In 1916 there was with Monongah a license. In 1917 Hartford Fairmont started a general licensing business.

[fol. 1227] Q. Were there others besides that?

A. Yes sir.

Q. Up to 1922?

A. That is right.

Q. As of to-day the Hartford-Empire Company is located where?

A. Hartford, Connecticut.

Q. Does it have any employees?

A. About four hundred.

Q. Are they all located in Hartford?

A. We have four or five men who are what we call district managers who are located in different sections of the country.

Q. I am going back to 1922. At that time were there other manufacturers or licensors of automatic machinery for glassware in 1922 besides your company?

A. I think there were.

Q. What is your best recollection?

A. That there were.

Q. Who were they, please?

A. There was the Howard Automatic Glass Feeder Company. There was a company in Columbus, Ohio: Tucker, Reeves and Beatty.

Q. Anybody else?

A. I have forgotten whether W. J. Miller was selling feeders at that time outright or not.

Q. I was directing myself to 1922. I said 1925. Does that refresh your recollection that Miller was selling feeders?

A. He was in 1925. I have just forgotten the date.

Q. And at the same time Owens was still exploiting suction machines?

[fol. 1228] A. The Owens Company on some date changed from a licensing company to a manufacturing company.

Q. Prior to 1922?

A. I would think it was about 1917 or 1918 if my memory serves me correctly.

Q. Did it not also license as well as manufacture glassware itself?

A. It originally licensed; then manufactured itself and licensed; and then became a manufacturer only.

Q. Do you have any recollection of the date when it stopped licensing?

A. No sir.

Q. You said you had about four hundred employees?

A. Correct.

Q. You said, I believe, in 1915, when you first came with the company, you had a relationship which might or might not have been a license with Monongah of West Virginia?

A. Yes sir.

Q. As of to-day how many licensees of feeders and formers does your company have?

A. About thirty-eight to forty.

Q. To-day is there any other manufacturer or licensor of automatic machinery in connection with glassware besides your company?

A. I don't know of any.

Q. If anybody should know, you would know, would you not?

A. I ought to.

Q. The Miller people are out of business, are they not?

[fol. 1229] A. As a licensor or as a builder of feeders.

Q. And the Tucker, Reeves and Beatty people are out of business?

A. That is correct.

Q. Mr. Howard is out of business?

A. Correct.

Q. In between 1922 and 1925 and the present date, there were other companies that were engaged in the business of manufacturing and licensing of automatic equipment for glassware?

A. I suppose you refer to feeders, do you not?

Q. Yes?

A. I don't remember. There is one more that I happen to think of: Mr. O'Neill. He licensed and sold a few feeders outright.

Q. He was doing business right in Toledo?

A. I think he was at that time.

Q. He no longer is in business?

A. Not that I know of.

Q. You said you had between thirty-eight and forty companies that were licensees of your company?

A. Yes. It might vary one way or the other.

Q. And the record will show the exact amount?

A. It will.

Q. Are there any manufacturers of glassware to-day, other than these thirty-eight or forty in the United States who are not licensees of your company?

A. There are.

Q. How many are there?

A. Three.

Q. Who are they?

Q. And there is another one: the Jeannette?

A. Obear Nester Company; the Reed Glass Company; [fol. 1230] and the Kerr Glass Company.

A. The Jeannette Glass Company.

Q. You are quite familiar with the volume of business done in the United States in connection with glass containers, approximately?

A. Approximately.

Q. What is the approximate amount of business in any year, 1939, 1940, 1938, in the manufacture of glass containers on automatic machinery?

A. Fifty odd million gross.

Q. How much of that fifty odd million gross is manufactured on automatic machinery by Hartford licensees?

A. About sixty-seven per cent.

Q. In addition to that is there not a volume made /by automatic manufacture by Owens on suction machines?

A. There is.

Q. What percentage is that?

A. I should think around 27, 28, 29 per cent.

Q. Have you any figures in your mind as to how much glassware is made on automatic machinery that is not Hartford licensed or in the Owens plant or plants?

A. Roughly get at it this way: if there are four manufacturers who do not use the suction machine or the Hartford machine, I think it represents about three or four per cent. But again I have not checked it up.

Q. Does you company manufacture glassware?

A. We do not.

[fol. 1231] Q. Have you ever manufactured glassware?

A. No. We have an experimental plant in which we test out our automatic equipment, and make a considerable amount of ware; but never sell it.

Q. Does your company manufacture automatic glassware machinery?

A. Most of the machinery we have built right next door to us. We design the machines; run a large drafting room; large engineering force; we test out the machines; and we have inspectors watching the machines as they are being built; because a glass machine running twenty-four hours a day has to be built to very close limitations; very fine machine tool work; and most of that equipment is built right in an adjoining building to us in Hartford. We do make certain parts in our own little shop; the clay parts, shear blades, and some of the minor parts of the machine.

Q. You said, as I understood you, most of the machinery is made alongside of you: does that mean in a plant of your own next door?

A. No, it is an entirely separate plant, called the Hartford Special Machinery Company.

Q. Is there any corporate or stock relationship between the two companies?

A. No corporate relationship. A few members of the Hartford-Empire Company own a few shares of the Hartford Special Machinery Company.

Q. But Hartford-Empire owns no stock in the Hartford Special Machinery?

A. Not one share.

Q. Does Hartford Special Machinery Company make the [fol. 1232] equipment for Hartford-Empire on order.

A. Correct. It is a machine company.

Q. But the equipment is built by Hartford Special Machinery Company for your company?

A. Under our supervision.

Q. I hand you a document which has been marked for convenience Government Exhibit No. 1, and ask you—it is a photostatic copy of a document—and ask you whether you can identify that document as coming from the files of your corporation?

A. I would assume it did, Mr. Isseks. It is signed.

Q. You recognized it, do you not, as a photostatic copy of the 1916 contract, which we talked about before?

A. That is correct.

Mr. Isseks: I should like to offer it in evidence, Your Honor.

Mr. Middleton: Your Honor, we object to the exhibit being received in evidence.

Mr. Emery: On behalf of the Thatcher Manufacturing Company and individual defendants who have answered with it, we make the same objection.

Mr. Fuller: In order to avoid the necessity of frequent interruption with several objections, may it be understood that the various parties may each have the benefit of objections made by respective counsel, so as to obviate the necessity of encumbering the record with objections each time.

The Court: You mean each corporate defendant?

Mr. Fuller: And his group, yes.

The Court: I think that could be understood. It would [fol. 1233] considerably shorten the time that otherwise might be taken.

Mr. Fess: Does that mean, Your Honor, if an objection is made on behalf of one defendant, it may be considered to inure to the benefit of all other defendants in the case, individuals as well as other corporate defendants?

The Court: Yes.

Mr. McCallister: Does it also mean independently of the statement or ground for the objection? That is to say, one corporate defendant might object on the materiality as to him, and another one might object on the ground it is purely and simply hearsay. I think that you have heard some hearsay testimony this morning. But I am asking if we have to urge our different ideas as to why the objection should be sustained?

The Court: I suspect if you all had to do that, there would be no necessity for the arrangement that is now contemplated.

Mr. McCallister: My thought was we might later argue any point on the admissibility of the evidence in question.

The Court: I think if you had some special argument you wanted to make, that should be made; but aside from that I don't think that would be necessary.

Mr. Sayles: In connection with this offer, if Your Honor please, I should like to state that Empire now, with the consent of the government, we understand, has been dissolved. We shall prove it later on. I thought we should state it at this time.

Mr. Haight: There is going to come a point in the case, if your Honor please, where we are going to object on behalf of Hartford—and I think that objection will be [fol. 1234] enthusiastically joined in by all other defendants —to testimony relating to matters which have become moot by reason of things that have been done by Hartford in respect to the complaints of the government since the suit was started. I do not propose at this moment to object to this particular document, except I would like it to be understood that we preserve our right to move to strike out such testimony as has become moot in the way we have indicated, this being one of the documents, because this particular contract has been cancelled.

I will not have to object until a seasonable time comes, if I can have that understanding. This matter may be relevant at this particular moment for some purpose that I do not know anything about; and I do not want to object, or to continue to object until I think the proper time has come to raise the point. If we may have that understanding, I will not interpose an objection now, or an objection to the other testimony that is sought to be elicited from Mr. Smith which comes within the category I have mentioned. At the proper time I will object to it; but I do not want to be foreclosed by failure to object at this particular time. Is that agreeable, Mr. Isseks?

Mr. Isseks: Of course Your Honor we are all anxious to move along, and I do not object to the procedure. I shall make it clear from the government angle, and based upon authority, we are entitled to put in evidence history and practices, notwithstanding their alleged claim that there has been a dissolution or discontinuance. When the appropriate time comes we will be glad to furnish Your [fol. 1235] Honor with necessary authorities. In fact we had been over that whole subject matter on another question.

The Court: This particular question that Judge Haight is raising now is whether or not it would be objectionable to the government if he reserved the right to make objection at the appropriate time.

Mr. Isseks: No objection whatsoever, Your Honor.

Mr. Middleton: I just objected to this particular exhibit. I did not elaborate upon any grounds. Of course there is immateriality with respect to my own clients. There may be other grounds. May it be understood if the objection is voiced, it will be based upon any appropriate ground? It is stretching the rule, I imagine, pretty far; but we do not understand that we shall have to have some particular statement.

Mr. Isseks: This Exhibit No. 1 is a twelve-page agreement, drawn, I presume, by lawyers, and I am not going to take the time to read the agreement in detail. I should like to point out it is dated June 30, 1916, signed by Empire Machine Company by Alexander D. Falck, President; and by the Hartford-Fairmont Company by Bartlett Arkell, President. If I may, I should like to point out in substance what this agreement sets forth.

The Court: Just before you proceed. We have not determined the request of Mr. Middleton as to whether or not an objection, if any is made, would stand upon the record as going to the several grounds upon which an objection might be made; so as to obviate the necessity each time of delineating those various grounds. Does counsel have any objection?

[fol. 1236] Mr. Isseks: Counsel has no objection, provided before any evidence, oral or documentary is excluded, the government has an opportunity to be heard on every ground, and the grounds are specifically named. Otherwise we have no objection. We are interested in moving along.

The Court: Proceed.

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[fol. 1237] Q. What was the Empire Machine Company, as far as you knew, in 1916?

A. The Empire Machine Company was a company that had been formed to develop automatic forming machines which would make bulbs or paste mold ware, or perhaps any other kind of ware if they happened to be so adapted.

Q. Who were the people in that company, so far as you knew?

A. They were officers of the Corning Glass Works; Mr. Falck and several other individuals.

Q. What was the Corning Glass Works at that time, as far as you knew; what was the company engaged in?

A. It was a very large company engaged in the manufacture of specialties, such as bulbs, tubing, cane, pyrex ware, signal and optical ware, and other special glasses.

[fol. 1238] Q. In 1916 you testified that Owens was manufacturing automatic suction machinery for the manufacture of glassware, is that right?

Mr. Wall: I don't think that was the statement. It was licensing machines.

Q. All right; I will take counsel's statement. In 1916, as far as you know, what was Owens doing as far as the automatic glassware machinery field was concerned?

A. I think in 1916 they still had some licensees, and they were producing and manufacturing glassware for themselves by the use of their own machines.

Q. Did you have any information in 1916 as to what Owens was doing in connection with feeder machinery?

Mr. Hamilton: Objection to the form of the question.

The Court: Overruled. He may answer, if he knows.

A. I simply would not know. I have no recollection at all.

Q. Mr. Smith, I hand you a document which has been marked for convenience as Government's Exhibit No. 2, and is dated December 19, 1916, and purports to be written by yourself to Mr. Honiss, and ask you whether or not you wrote that memorandum?

A. I wrote this, Mr. Isseks.

Q. At that time you were general manager of Hartford-Fairmont, were you not?

Mr. Isseks: I offer the document in evidence.

Mr. Middleton: Objection to it for a number of reasons. I believe we should state one or two of them specifically. This document appears to be a memorandum written by Mr. Smith to Mr. Honiss, who was also employed by the same company. It is not a communication going from Mr. Smith [fol. 1239] to one of the other defendants in this case, or to any one other than an associate in the same organization. It would seem manifest that neither the Owens group nor any other defendant should be bound or in any way prejudiced by a document of that type.

I take it there will be many of them that appear in the course of the evidence here. We urge the objection that it is not competent evidence in this case, even though it is a conspiracy case, to bind or in any way influence a decision with respect to Owens-Illinois. I object to its being admitted.

Mr. Isseks: Mr. Honiss is a defendant who died. At the request of counsel for Hartford-Empire, he was not served, while he is named as a defendant and co-conspirator. I do not want to take Your Honor's time arguing rules of evidence. The document itself shows on its face it was part of the conspiracy, if Your Honor cares to look at it.

The Court: I am wondering what course counsel wants to pursue with the offering of these various exhibits. Do you desire to offer them in evidence with the witness on the stand each time that you are prepared to reach that point?

Mr. Isseks: That is what counsel had in mind, Your Honor, in connection with the trial of the case. We want to follow a logical sequence. It was my thought to read it. It shows on its face it is part of the beginning of the conspiracy.

The Court: Counsel feels that will cause less confusion than if the various exhibits are identified, and then allowed to be offered consecutively after the witness has left the stand?

[fol. 1240] Mr. Isseks: My thought is that it would cause less confusion. That is my thought in the matter. I will be guided, however, by Your Honor's direction in the matter, if you prefer to mark the documents and offer them later on. I had in mind reading the document into the record; and then it would be a record which would show, as we intend to prove, the logical following out of the conspiracy from 1916 to date.

The Court: I should prefer, if the documents are not too lengthy, that they be read into the record; because it would obviate the necessity of the court later reviewing each one of the exhibits separately from the record itself. I agree with that. Each time that you offer an exhibit with the witness on the stand, there may or may not be some objection, argument to sustain the objection, and argument in opposition to the objection. Counsel believes that he can make better time and have less confusion that way than to wait until they are all identified?

Mr. Isseks: I should like to try it. It seems to me after we go along a little while and the objections have been ruled on, we will move along faster; and we will have a record that goes in logical sequence.

Mr. Middleton: May I point out this difficulty in handling this problem. Here is an instrument with which the rest of the defendants are entirely unfamiliar. I have never seen it in my life until just this moment. There are so many of us involved, it is almost necessary that we be given an opportunity to see and read an instrument before an objection can be pressed with respect to it. And that makes it almost [fol. 1241] impossible for the court to rule at once. It would seem to me better to postpone rulings until we get under way, rather than to read these things in the record.

Mr. Isseks: We will have the same problem later on. It seems to me if we wait for all these documents, we will be arguing the matter later on. Our case is primarily documentary. I intend to take it document by document which came from the files of the various defendants. We did not have any of these documents until we got them from their files. That is the only way I know of to prove this case. We will endeavor to furnish counsel—we have copies of some of these documents—just before we have them marked.

The Court: I have no objection to following that plan. But I think there ought to be some arrangements made whereby various interested counsel may have an opportunity to look at these proposed exhibits in advance of the offer, rather than take time each time to pass them around. We are going to spend a lot of time here examining documents.

Mr. Haight: I think the suggestion Your Honor made is the better one. If Mr. Isseks wants to interrogate a witness about a document, he can do so, of course. Otherwise we will be here for a time which none of us can calculate, because, manifestly, an inter-company communication cannot be evidence against Mr. Middleton's client, or the other defendants, until it is proven that they are all part of a conspiracy.

Now Mr. Isseks certainly cannot contend that the Owens Company and the Hartford Company were in a conspiracy in 1916 because the Owens Company at that particular time, [fol. 1242] and from then until the 1924 agreement was made; as soon as Hartford came out with something that was really substantial, they made every effort they could to harass Hartford and put them out of business. You cannot say a person is a conspirator who occupies and asserts a position absolutely contrary to his alleged co-conspirator.

If we adopt the suggestion of Your Honor, that these instruments be marked for identification, and then offered at a proper time, I think we will save a great deal of time. If Mr. Isseks wants to examine Mr. Smith or any other witness about any particular phase of something in the communication, that can be done; but I really do think your suggestion is the wise one to take.

Mr. Isseks: If the document is admissible, it would make a record of logical sequence if read into the record. For my part, if counsel for the defendants would like to argue it out, we are prepared to argue the admissibility of this document against each and every defendant, no matter when he joined the conspiracy. On the other hand, if Your Honor thinks for convenience we should wait before offering each document, I am perfectly willing to interrogate the witness about the contents of the document.

The Court: You may proceed to examine him on the documents.

Mr. Isseks: I can refresh his recollection, or try to. I think if the document is admissible, it will take less time to read it into the record, and ask perhaps one or two questions, rather than try to refresh the recollection of the witness line by line.

[fol. 1243] The Court: If you have some method of acquainting counsel and giving them some opportunity to see these proposals in advance, I have no objection to pursuing your course. But I do object to each counsel taking time every time you make an offer here, to see these for the first time, because there will be considrable time taken in examining the documents.

Mr. Isseks: We have made copies, but not enough copies for all counsel, of the documents we intend to use in connection with the interrogation of Mr. Smith. We have been shorthanded until recently. I will make every effort, if Your Honor lets me proceed in this manner, to furnish principal counsel for the defendants with copies in so far as they relate to the particular defendants.

That document right there, Your Honor, first came from the files of Hartford-Empire. Hartford-Empire have known we have had it for a little over two years. There is no mystery about that. It has been stipulated as to its genuineness. I have not felt free to furnish copies to counsel for the other defendants because we obtained the documents, under stipulation, as I understood it, at least until the trial started we could not disclose it to the others. But if they are willing to let us distribute them, we will make such distribution as we can. But I hate to be handicapped by having our small group of stenographers spending their time typing these documents.

Mr. Haight: Why would this not be the natural result? If you mark the letter for identification, counsel can very [fol. 1244] readily determine whether they have it in their files, or whether they have not. Then if there is something that has to be explained in the letter, or something you want to bring out to refresh the witness' recollection, you can do that by the witness. But I don't think anything is going to be gained by simply having the stenographic record made larger by writing into it a document.

These documents can all be put together under a folder, the same as we have done, and presented to Your Honor; and when we come to argue the case, and Your Honor comes to consider it, you will have all these documents under one folder. It seems to me it will be much easier for you than to have to thumb through maybe thousands of pages of stenographic record to read it. Then it must be all gone over by counsel to see that the stenographer has gotten it correctly into the record. I never could see any advantage of reading those things into the record, where the record is going to be long. If it is a short one, it is easy.

Mr. Isseks: My thought is I am going to shorten the record. I want to point out it is a document written by this witness when general manager of the Hartford-Fairmont Company after the 1916 contract was executed. It is our theory it is part of the conspiracy, and binding upon the conspirators in the then conspiracy and those that came later on. I see no difficulty in offering the document and reading it into the record. I prefer to do that.

I think Your Honor has made a point in the fact that we are going to be slowed up. But I will try to organize our [fol. 1245] stenographic staff. Maybe we can get help from local counsel to get copies.

There is no mystery about it. The reason we did not give it to counsel. We had an understanding that we would not furnish defendants documents that came from the files of the other defendants. I do not blame them. There is a lot of this information that is new to them. They are going to be perhaps surprised. We are perfectly willing to try the case and give them copies. I could not do it yesterday. I have five copies here. I will try to distribute those documents as we go along.

Mr. McCallister: Why could we not have photostatic copies made? A large number of copies can be made up; at least twelve, at any rate, that will give each one of us the benlefit of having a true copy of the exhibit.

Mr. Isseks: I have no objection.

Mr. Haight: Every one will want to object who is not a party to that.

Mr. Isseks: There is an objection already on the record. Mr. Middleton has said, Mr. Fuller has already said, Mr.

Fess has already said, they object to anything that is not shown to be written to their particular client. That objection is on the record. It is understood the objection is there.

I think for sequence, showing this thing the way it happened, if the document is admissible, I should like to offer it. We will not burden Your Honor with reading documents that are long. We have already taken the liberty to summarize a ten-page document in a half a page. These documents are the facts of the case. They show what these gen- [fol. 1246] tlemen did. They show how the conspiracy and monopoly were created.

The Court: I think counsel would agree if we were trying the case to a jury here, it would be the duty of the court to instruct the jury each time that the document would have no application to parties yet unproven in the matter. I think that is the point Mr. Middleton is getting at, and Judge Haight referred to as to whether or not—what proving force these documents would have at this time on defendants yet unnamed.

Mr. Isseks: I will offer them all subject to connection. If I do not show that Owens is a conspirator, I will move myself to have these documents stricken. The same thing applies to every one else. We have some in 1916, some in 1919, some in 1924, some more in 1932 and 1933. Some time as we come along those particular defendants will be brought into the case through this witness.

I urge my offer, Your Honor. I urge the document in evidence.

Mr. Sayles: Let us enter an objection that covers us all, if Your Honor please.

The Court: That is right.

Mr. Middleton: May I make this further comment with respect to that paper before Your Honor rules? If Mr. Isseks could give us even a list of the instruments to which he intends to refer, we might at least be partially prepared, because we have mimeographed copies of a proposed stipulation which covers all of the documents taken from all the files. While we do not have all the documents, we will at least know something about what he is going to use.

[fol. 1247] This particular instrument now raises a question absolutely fundamental in this case. It is going to run clear through. I don't know whether Your Honor is prepared to rule or not; but I would suggest that ruling be deferred until after lunch, to give everybody a chance to absorb this question, if it please Your Honor, instead of admitting it now, if the court were now disposed to admit this. This is so important.

The Court: Your particular objection goes to inter-communications within a company?

Mr. Middleton: That is right.

Mr. Isseks: In order to go along, I make the suggestion that Your Honor permit the document to go into evidence, subject to a motion, which can be made at any time, to have it stricken as not being binding upon a particular defendant. I am anxious to move along in sequence.

It seems to me—I do not want to labor the question—here is the witness who wrote the document; general manager of Hartford, who is a defendant. He wrote it to another defendant co-conspirator. We offer it subject to connection as against the other defendants in the case. When the proper time comes we will show the connection. We cannot very well have a motion picture going on and a parade of witnesses. It cannot be done. I cannot jump around. I will have to go along, bit by bit of evidence. I will have to go along logically from 1916 to 1941. It seems to me the document is admissible against the party who wrote it, against Hartford-Empire, the predecessor corporation; and will be admissible against the other defendants if they are shown to be members of the conspiracy. That is elementary law [fol. 1248] with regard to criminal conspiracy, and conspiracy in antitrust cases.

Mr. McCallister: May I make a suggestion in connection with Mr. Isseks' last thought. It seems to me if the matter is introduced subject to a motion to strike, it puts the burden on the moving party then; whereas, the burden should be on the government in connection with these particular documents to show their admissibility. As a matter of fact I don't see how a ruling can be made at this time on this particular document until a conspiracy is disclosed; a conspiracy for example which involves Ball Brothers, because otherwise Ball Brothers has no interest in a thing which happened and which was dead many years before the government claims, even claims that Ball Brothers entered the conspiracy.

My thought is that it would be highly objectionable to place upon each defendant the burden of sustaining the motion to strike; whereas the burden is with the government to get the document in.

Mr. Isseks: On that theory I must prove my case before I put my evidence in. Mr. Smith can say, or his counsel, that does not bind him on the same theory. I intend to show in 1933 that Ball Brothers became a part of the conspiracy. I offer it now against Ball Brothers, subject to that connection.

The Court: I can see nothing harmful in permitting counsel to offer these exhibits; with the understanding, of course, that it would not be binding upon the several defendants until and unless they have been shown to have become a party to the alleged conspiracy. If we followed any other [fols. 1249-1250)] course it be necessary for the government —the government would be restricted as to showing the adherence of each of these several defendants to a conspiracy; and then follow with the introduction of the various documents in furtherance of that conspiracy.

I am interested in this question at this time, and counsel may prepare to offer some precedent for it, as to whether or not a communication made by this gentleman to somebody in his office or in his company; as to what binding effect that might have upon an alleged conspiracy.

Mr. Isseks: Your Honor, my associate, Mr. Apsey, is prepared to argue that question, and perfectly willing right now to give authorities to Your Honor.

The Court: We might as well hear it now.

[fol. 1251] Mr. Wall: Under the decision quoted by Mr. Apsey, we request that the evidence be limited to showing [fol. 1252] the state of mind of the writer of the document at the time written.

Mr. Isseks: No, Your Honor. Judge Learned Hand did not restrict the proof just to show state of mind. He says he goes not only to show a state of mind, but it also went in that case for the facts set forth therein. You could not get a better piece of evidence than a man sitting down in his office and writing what happened. We offer this for the contents set forth in the memorandum; and I will use it also to refresh the recollection of the witness in connection with an answer he gave me earlier that he had no knowledge that Owens was contemplating producing a simple feeder as distinguished from a suction machine.

Mr. Wall: I just want to make the point we request to limit it as stated, so that the record will show we are standing on that point. I have no doubt at all, with the gentle-

INDEX OF WITNESSES—Continued

Testimony of—Continued	Orig.	Print (Vol.)
McCrystal, Robert		
Direct	7210	3977 (vi)
Cross	7283	3993 (vi)
Redirect	7240	3997 (vi)
Direct	7250	4004 (vi)
Stipulated...(omitted in printing)	12153	
McLaughlin, John Edward		
Direct	11228	6311 (viii)
Cross	11294	6353 (ix)
Redirect	11297	6355 (ix)
McNash, J. Harrison		
Direct	4335	2323 (iii)
Direct	4485	2406 (iv)
Cross	4648	2501 (iv)
Cross	4711	2536 (iv)
Redirect	4760	2562 (iv)
McNerney, John H.		
Direct	5398	2950 (iv)
Cross	5423	2964 (iv)
Redirect	5433	2970 (iv)
Direct	11062	6221 (viii)
Direct	11326	6369 (ix)
Cross	11403	6417 (ix)
Redirect	11415	6426 (ix)
Milner, Edwin E.		
Direct	11660	6575 (ix)
Direct	11689	6594 (ix)
Cross	11717	6612 (ix)
Myers, G. E.		
Direct	11677	6586 (ix)
Cross	11685	6592 (ix)
Mount, A. J.		
Stipulated...(omitted in printing)	12174	
Naylor, James E.		
Direct	5868	3222 (v)
Nesbitt, Frank T.		
Direct	11416	6426 (ix)
Norton, H. H. (omitted in printing)	4477	
O'Connor, C. J.		
Stipulated...(omitted in printing)	12134	
Ohrn, Carl B.		
Direct	7241	3998 (vi)
Cross	7241	3999 (vi)
Pease, Alfred M.		
Direct	5886	3233 (v)
Cross	5958	3280 (v)
Redirect	6021	3319 (v)
Recross	6053	3339 (v)
Redirect	6055	3340 (v)

INDEX OF WITNESSES—Continued

Testimony of—Continued	Orig.	Print (Vol.)
Peiler, Karl E.		
Direct	7739	4293 (vi)
Cross	8295	4601 (vi)
Redirect	8631	4807 (vii)
Recross	8691	4846 (vii)
Petty, F. J.		
Direct	11767	6643 (ix)
Cross	11774	6647 (ix)
Pollock, Franklin B.		
Direct	6573	3637 (v)
Cross	6579	3641 (v)
Redirect	6583	3644 (v)
Recross	6583	3644 (v)
Ramsey, Ellwood		
Direct	7468	4140 (vi)
Cross	7474	4144 (vi)
Redirect	7487	4152 (vi)
Recross	7491	4155 (vi)
Rau, J.		
Stipulated...(omitted in printing)	12157	
Rieman, G. Fred		
Direct	3826	2029 (iii)
Cross	3914	2077 (iii)
Redirect	3940	2093 (iii)
Recross	3943	2095 (iii)
Safford, Arthur T., Jr.		
Direct	7148	3952 (vi)
Cross	7163	3959 (vi)
Redirect	7166	3962 (vi)
Cross	7172	3965 (vi)
Redirect	7174	3965 (vi)
Direct	7378	4089 (vi)
Cross	7441	4127 (vi)
Direct	7494	4157 (vi)
Cross	7596	4217 (vi)
Redirect	7626	4233 (vi)
Direct	10170	5703 (viii)
Cross	10251	5748 (viii)
Redirect	10270	5759 (viii)
Direct	10390	5835 (viii)
Cross	10391	5836 (viii)
Saperston, Alfred M.		
Direct	5746	3153 (v)
Cross	5771	3168 (v)
Schwensfeier, C. W.		
Direct	4217	2258 (iii)
Cross	4222	2262 (iii)

INDEX OF WITNESSES—Continued

Testimony of—Continued	Orig.	Print (Vol.)
Smith, F. Goodwin		
Direct	1221	635 (I)
Cross	2709	1393 (II)
Redirect	2884	1489 (II)
Recross	2893	1507 (II)
Soubier, Leonard D.		
Direct	11815	6652 (IX)
Cross	11835	6664 (IX)
Sullivan, Eugene C.		
Direct	9971	5582 (VIII)
Tassick, John A.		
Direct	11125	6245 (VIII)
Cross	11136	6253 (VIII)
Thompson, William H.		
Direct	6814	3771 (V)
Underwood, Roy R.		
Direct	2896	1508 (II)
Cross	2967	1551 (III)
VanBibber, Arthur E.		
Direct	8906	4948 (VII)
Cross	8964	4984 (VII)
Redirect	8974	4991 (VII)
Recross	8976	4992 (VII)
Wellinghoff, E. F.		
Direct	6124	3366 (V)
Cross	6132	3372 (V)
Werbe, T. C.		
Direct	4973	2690 (IV)
Cross	5213	2836 (IV)
Redirect	5275	2875 (IV)
Redirect	5283	2879 (IV)
Recross	5299	2889 (IV)
Wheaton, F. E.		
Stipulated	11946	6723 (IX)
Williams, Lloyd T.		
Direct	6584	3645 (V)
Cross	6651	3685 (V)
Cross	6743	3738 (V)
Redirect	6793	3758 (V)
Recross	6812	3770 (V)
Wright, John H.		
Direct	6067	3343 (V)
Cross	6093	3346 (V)
Redirect	6108	3356 (V)

Q. Do you remember yesterday you testified you at- [fols. 1413-1414] tended a meeting of December 16th, at which were present Mr. Owens, Biggers, Blair, on their side?

A. I did.

Q. And from your side Messrs. Bartlett, yourself and Knox Smith?

A. Yes.

Q. You testified there was a sub-committee appointed of Messrs. Knox Smith and Blair?

A. Correct.

Q. Then I showed you the document which purports to be a report of conference by Mr. Knox Smith, of conference he had alone with Mr. Blair?

A. Yes.

Q. Now, I am asking you to please look at Mr. Knox Smith's diary entry appearing for December 20th, and see if that does not refresh your recollection that you went over this memorandum of this conference with the two gentlemen with Mr. Knox Smith.

A. I don't think there is any question, Mr. Isseks, but what I did. Of course I knew about the meeting and it was set; probably Mr. Smith came back and reported the meeting probably to me.

Q. And then later——

A. Then later he may have written a memorandum, but I do not know whether I saw it or not, but he certainly would report to me as to what took place at the meeting between him and Mr. Blair.

* * * * * * *

[fol. 1415] Q. I direct your attention to the diary entry—I will see if I can do it—the one I have here, the one I am pointing my finger on right here—and ask you whether that does not refresh your recollection that you went over the memorandum at the time with Mr. Knox Smith?

A. It does not refresh my recollection, but I undoubtedly did.

Q. I will see if I can help you a little further. I ask you to turn to page 5 of that memorandum, and then I ask you to look at page 3 of Government Exhibit 24, which has been marked in evidence, and see whether that does not refresh your recollection that the material you set forth on page 3 as regards Owens' maintaining the royalties are justified for the following reasons,—if that material was not obtained by you from the memorandum which Mr. Knox Smith wrote of the conference he had with Mr. Blair on December 16th after the big conference?

[fol. 1416] A. Well, in this memorandum of mine, Mr. Isseks, I of course do cover a great many of the subjects that took place at the meeting, and they are referred to here in this particular memorandum written by Mr. Knox Smith.

Q. Exhibit 25?

A. This is 24.

By Mr. Isseks: I offer Government's Exhibit 25 based on the witness' statements.

Mr. Haight: I do not think that is in the same category with the last exhibit received, because the last one was a recital of things that had happened at a meeting at which the witness was present. This is merely a recital of things that happened at a meeting between Mr. Blair and Mr. Knox Smith, and therefore, even though it were shown to Mr. Goodwin Smith and he saw it at the time, wouldn't make it evidential as to statements in there that Mr. Knox Smith made, for instance, as to what Mr. Blair said. That certainly could not be admissible under even the co-conspirator rule, because the declaration of a co-conspirator, if Mr. Blair be considered as in that category, must have the sanctity of an oath attached to them in order to be admissible. Mr. Knox Smith, if he were here, to make my point clear, could testify to what Mr. Blair said, and it would be admissible as against Mr. Blair and against his company, if the proper foundation were laid; but the mere fact Mr. Knox Smith came back to Hartford and made a memorandum of what happened, and showed it to Mr. Goodwin Smith, doesn't make that admissible even though Mr. Goodwin Smith saw it at the time, because he was not [fol. 1417] present and it is not corroborative. I may be stating it very poorly; but it has not the sanctity of an oath that the last exhibit had, when Mr. Smith said that he saw it and approved it, or rather said he assumed he saw it and approved it. I think they are in an entirely different category, and this particular exhibit, therefore, must go with those other exhibits about which Your Honor is going to rule a little bit later.

Mr. Freed: If the Court please, the Supreme Court has held otherwise with reference to declarations of a co-conspirator, and has said those declarations, even though one of the co-conspirators may be dead, may be shown.

Mr. Haight: You are referring to the Houston case?

Mr. Freed: No, I am referring to the Delaney case in 263 U. S., 586, at page 590. The Supreme Court held exactly the opposite. The Supreme Court has definitely stated that the declarations or admissions of a co-conspirator may be admitted and are admissible to bind all the co-conspirators as other conspirators even though they may be dead.

Mr. Haight: I can agree to that, provided somebody is on the stand, under oath, who says that they made the statements. But I don't believe—and if I am wrong my knowledge of the law of evidence is completely at sea—I don't believe any court has yet said when one co-conspirator jots down in writing what another one said, and no one is present to say that the person who is supposed to have made that statement which is jotted down in writing, [fol. 1418] did make the statement, that it can be received in evidence.

By Mr. Freed: This witness has certainly testified, and has said, I think has said in so many words, he has not seen one memorandum that was introduced here which was not made by Herbert Knox Smith, but did recognize them, and does recognize them as the memorandums of Herbert K. Smith, which satisfies all of those rules.

Mr. Haight: I think you misunderstood my point. I don't know whether Your Honor wishes me to address myself to Mr. Freed——

The Court: The ground upon which the matter will eventually turn is whether or not the memorandums of Herbert Knox Smith are relied upon and were relied upon by the company as documents made by its agent designated for that purpose, kept in its files over a long period of years as evidence, historical evidence, of the transactions that occurred 20 years before.

By Mr. Isseks: We agree with Your Honor.

By Mr. Freed: We will be prepared to argue that very point.

The Court: I assume Mr. Apsey is coming to that point; I don't know. I would like to see some authority on it. That is what appeals to me on the question of this memorandum of Herbert Knox Smith found in the files of the Company. I felt Government Exhibit 15, when offered, had nothing at that time to recommend it as an exhibit, and [fol. 1419] that is the reason why I abruptly refused it.

Mr. Freed: We are prepared to argue that, but in addition there is one further element that is demonstrated, and that is that the document relates to declarations and statements of another co-conspirator, and we contend that Herbert Knox Smith is a co-conspirator in this case, and his own declarations and admissions are admissible, if he is a co-conspirator, aside from admissions on the part of the corporation. We are going to be prepared to argue both.

The Court: You go a step further. You say Herbert Knox Smith, in a memorandum which is now before us, quotes Mr. Blair as having said certain matters, made certain representations. Now, Mr. Blair is not here and there is no witness to testify as to the correctness of that conversation, and especially the representations made by Mr. Blair; there is no opportunity to cross-examine the witness, and certainly no opportunity so far to draw from Mr. Blair the facts of whether or not he made these statements. That, of course, is going a little far in admitting a document of this kind, where it contains the colloquies alleged to have occurred between these two gentlemen.

Mr. Freed: We believe that the Murray case in the 4th Circuit fully and completely answers that question with reference to statements of that sort.

The Court: Well, I would like to see those cases.

[fol. 1420] By Mr. Freed: We are prepared to argue those, and it is my suggestion they ought to be argued as promptly as possible. We suggested to opposing counsel last night it be argued as promptly as possible. We believe we have the definite answer to all the queries Your Honor has put to us at this time. We will be prepared to argue it as promptly as Your Honor sets the time for it.

Mr. Isseks: The Government is perfectly willing to defer the document, on the statement it is a little different than Government Exhibit 26. I think it is possibly different than Exhibit 15. I think it is more like 22.

The Court: I agree with you, that 26 and 27 are in a different category. Perhaps there is a substantial difference between 25 and 15, but I believe I would rather hear the argument on that. I think I will refuse the request at this time.

Mr. Isseks: Defer the matter?

The Court: Yes, defer it.

Mr. Haight: It goes in the category of the other?

The Court: Yes.

Mr. Isseks: That is all right with us, Your Honor.

Q. I would like, Mr. Smith to go back a little. Yesterday I showed you the memorandum, Government Exhibit 23, which purports to be a memorandum of the large conference on December 16th. In that connection I would like to show you a photostat of an original letter. This letter comes from the files, as I understand it, of the Owens-Illinois Glass Co., and I understand, subject to cor- [fol. 1421] rection, its genuineness has been stipulated. It is not among the exhibits, copies of which have been given counsel, but my associate will pass out copies to everybody. I ask you if you can recognize that photograph of signature of Herbert Knox Smith.

A. What is the question?

Q. Is that Mr. Knox Smith's signature?

A. Yes, it is.

Mr. Isseks: It has not been marked yet. I will mark it. I would like to have this marked Government's Exhibit 28. For the record, before I ask the witness any further questions, this is a document dated December 23, 1921, signed by Herbert Knox Smith, General Counsel, on the stationery of the Hartford-Fairmont Company, addressed to J. C. Blair, Owens Bottle Company. The witness has identified the signature of Mr. Herbert Knox Smith. Subject to correction, I understand there is a stipulation this is a photostat of genuine document found in the files of the defendant Owens Glass Company, and I offer it in evidence.

The Court: It may be admitted.

By Mr. Wall: We don't consent to the statement it refers to Exhibit 23.

Mr. Isseks: I don't say that yet. I am going to ask the witness.

Mr. Emery: May the record show an objection?

Mr. Middleton: May I just, in that connection, since you are talking about that letter, just to clear up, I think this is the appropriate time, the request made yesterday that we produce a memorandum, and we do not have it. In [fol. 1422] the course of the 20 years we have a portion of it and not all of this, and it was so noted on the margin of that letter when the T.N.E.C. searched our files. It wasn't in our files in 1938.

Mr. Isseks: I noticed that last night. That is the reason I produced this letter. The letter reads: "I enclose herewith memorandum which I promised, covering the general interview between the seven gentlemen on the morning of December 16, 1921." In handwriting on the right-hand side it says: "Don't have". It has the initials of one of my associates, Irving Glickfeld, who at that time was working for the T.N.E.C. I will agree with Mr. Middleton in 1938 they didn't have the memorandum. If they didn't have it then I assume they don't have it now. The next paragraph says: "I have not attempted to make this in any way complete, but simply to cover the important points. On this memorandum, as in the one sent you previously, I shall greatly welcome any corrections or additions that occur to you."

Q. Mr. Smith, I now show you a document which, again may I say we didn't have a chance to distribute.

I would like to have this marked Government's Exhibit 29. (So marked.)

Q. I show you this document, Government's Exhibit 29, a photostatic copy, on the stationery of The Owens Bottle Company, purporting to be signed by one J. C. Blair, Vice-president and general manager of The Owens Bottle Company, and addressed to Herbert Knox Smith. As I under-[fol. 1423] stand it, this document has been stipulated to be a genuine document from the files of the Hartford-Empire Company.

Mr. Haight: I don't find it, but I will look.

Q. Now, I would like to ask the witness a question. I would like to have him look at it and look at the second entry on December 30, 1921, from Mr. Herbert Knox Smith's diary, and say if that does not refresh your recollection that Mr. Herbert Knox Smith discussed with you that letter from Mr. Blair?

A. (Witness confers with counsel for government.)

Q. I am very sorry. It is an entry, I should have said, of December 30th, the second entry.

Mr. Wall: That is in the stipulation.

Mr. Isseks: Thank you very much, the document has been stipulated as genuine from the files of the Hartford-Empire Company.

A. May I read this first?

Q. You understand the question was if the entry refreshes your recollection that you went over that letter with Mr. Knox Smith. Of course you ought to read the letter, by all means.

A. I don't remember. There is not any question I saw it.

Mr. Isseks: I offer the letter in evidence.

By Mr. Emery: May we have an objection?

By The Court: Objection overruled; it may be admitted.

(Said exhibit read.)

Mr. Isseks: I would like to point out, if I may, while [fol. 1424] this refers to the earlier conference of December 16, as to which I am going to ask the witness another question, in that connection keep in mind Mr. Knox Smith, the record now shows, sent this to Mr. Blair, and Mr. Blair sent it back, and made two suggestions and didn't question in an iota the rest of the memorandum.

Q. Now, I would like to have you look again at Exhibit 23, which is a memorandum of the big conference of the seven people, and I ask you in the words, I believe, of your counsel, whether that sets forth in substance what took place at the meeting of the seven people on the morning of December 16th.

A. I don't know as I understand your question. Of course a great many subjects were discussed at those conferences pro and con. Various questions about some kind of arrangements for a getting together. I still don't remember who said just what, or just what they said, or just the words that come here. Of course, I remember various subjects were taken up and discussed in general. When these memorandums refer to something I said, why, they refresh my mind as to the attitude that I took or what I contributed to the meeting. I want to admit what I can, what I do remember. I don't want to cause you a lot of trouble, Mr. Isseks, but I don't know as I understand your last question.

Q. My question is whether the memorandum sets forth in substance—you couldn't remember the details of 19 or 20 years ago, nobody expects you to——

A. I would say, generally speaking, the subject covered [fol. 1425] by these memorandums——

Mr. Wall: This memorandum.

The Witness: This memorandum,—was under discussion at these meetings.

Q. Again, I have to repeat some questions. Mr. Smith was in the habit of being very careful, wasn't he, as to what took place?

A. I think so. I think, however, a man who makes a lot of notes and then goes home and expands on them, the substance may be fairly correct, but just whether somebody actually said this or somebody actually said that in the words he happens to remember——

Q. He would not add anything that took place unless he was confident of it?

A. No.

Q. In general, that memorandum sets forth what took place, as far as your present recollection goes?

A. I would say in general these subjects were discussed in that meeting of December 16th.

Mr. Isseks: Now, I believe it is now in the category of Exhibit 26 and I offer it in evidence.

The Court: It may be received, over objection.

Mr. Isseks: I would like to make a suggestion that the witness be given the copy of the next exhibit, which is about five and a half pages, and during the recess if he can find 5 or 10 minutes, it will save us some trouble. I will have it marked for identification as Government Exhibit 30. (So marked.)

[fol. 1426] Mr. Isseks: It has on the top, "Memorandum of interview 3/3/22".

(Thereupon noon recess was taken.)

[fol. 1427] (Wednesday, p. m. session, March 5, 1941)

Q. Mr. Smith, you read that document which is marked Government's Exhibit No. 30, and which is dated March 3rd, 1922, and purports to have been written by Mr. Herbert Knox Smith?

A. I did.

Q. Does that document refresh your recollection that you attended a conference at the Ritz-Carlton, New York, February 8, 1922?

A. I attended that conference.

Q. And does the document correctly reflect what transpired at the meeting while you were present?

A. It refreshes my mind to this extent, Mr. Isseks: simply that it was a very important, serious, meeting; and we were approaching an impasse as regards the negotiations.

Q. Does the document reflect what took place at the conference, which extended over two days, while you were present?

A. I should like to reply the same as I have to all these documents. I don't remember the details of them. My impression as regards this one is that probably it is correct; but I cannot remember whether all the details are just as written or not; or whether the various people made the remarks as so stated here.

Q. You said earlier today, as to two of the memoranda, generally they were accurate?

A. I would think so, generally.

Q. And the same thing applies to this one?

A. Yes sir.

Mr. Isseks: I offer it in evidence.

The Court: That is Government's Exhibit No. 25?

[fol. 1428] Mr. Isseks: No. 30, Your Honor.

The Court: Let me see what it is.

(Document shown court.)

Mr. Isseks: I should like to ask the witness one other question:

Q. On the original document there is a notation on the front of it, "Copy to F. G. S.": You see that there, do you not?

A. I do.

Q. Whose handwriting is that?

A. Herbert Knox Smith's.

Q. Does that refresh your recollection that you received a copy of the memorandum in the course of business about the time it was written?

A. I do not doubt I received a copy.

The Court: The objection will be overruled. It will be admitted.

Mr. Isseks: I should like to have it read.

Thereupon, Government's Exhibit No. 30 was read to the court by Mr. Lewis, of counsel for the government.

Q. Mr. Smith, you recall that subsequent to the conference in February, there were other conferences with the Owens group?

A. There were additional conferences; I don't remember how many.

Q. I hand you photostatic copy of memorandum which reads: "Memorandum of interview" dated 4/5/22, and signed, "Knox Smith", and marked Government's Exhibit No. 31. First of all, I ask you to identify the handwriting at the end?

A. That is Mr. Knox Smith's signature.

Q. I ask you to read it and see whether it refreshes your [fol. 1429] recollection?

(Witness does.)

Q. You have read it?

A. I have.

Q. It comes from the files of your company, does it not?

A. It does.

Mr. Isseks: Your Honor, this is one of the documents about which there has been a stipulation entered into by Hartford as to its genuineness, subject of course to their right to object. I am subject to correction if I am wrong.

Mr. Wall: Subject to correction, I will approve your statement.

[fol. 1430] Q. Mr. Smith, you recall this conference sometime during the afternoon?

A. This memorandum so states; I don't recall.

Q. Do you remember having any conference with Mr. Knox Smith about the memorandum either before or at the time it was prepared?

A. I don't remember it now.

Q. Do you have any recollection of going over the memorandum with him?

A. No.

Q. As to those parts of the memorandum dealing with the conference after you attended it, do you have any question in your mind that it sets forth what transpired at the meeting?

A. The way it is stated here?

Q. Yes.

A. I don't happen to remember it, but I am not in position to deny such things happened at the meeting.

Q. I didn't hear the answer.

A. I do not actually remember what took place at the meeting.

Q. Generally, it did set forth what took place after you attended the meeting?

A. In a general way, I believe it must have.

Q. I direct your attention to the last page, next to the last paragraph, and ask you whether it does not refresh your recollection that this memorandum was circulated by Mr. Knox Smith to other executives and directors of your company?

A. Which paragraph?

[fol. 1431] Q. Next to the last paragraph on the last page, page 9.

A. This paragraph in itself, I don't know as it indicates copies had been sent.

Q. Doesn't it indicate to you, the phraseology, Mr. Knox Smith was reporting your views and his views to somebody else as to the progress that was being made?

A. I don't so interpret it. I don't say that he did not.

Q. Doesn't it bring back to your memory that the reason why that was set down in that form was to apprise someone other than the persons present of how far you had gotten with these people?

A. No, it does not.

Q. It does not bring back any recollection?

A. None.

Mr. Isseks: Now, Your Honor, I would like to produce a document and would prefer not to offer it in part, in view of Your Honor's ruling that you would defer any decision where there was merely a document written by Knox Smith as to which the witness didn't have a definite recollection. I think, as to the part after he attended the conference, it is in the category of the last few documents Your Honor has admitted, but the Government would like to prove the entire document. We will wait until after Your Honor's determination.

By the Court: Very well.

Q. Now, Mr. Smith, there were other meetings, were there not, that were attended by one or another of the representatives of Hartford-Fairmont with the representatives of [fol. 1432] Owens besides the ones originally testified to?

A. I think there were meetings that lasted up to around June and sometime early in the summer, but I cannot remember.

Q. At some of the meetings Mr. Knox Smith went alone and then reported back to you?

A. Two meetings he attended alone. I don't remember whether he went to additional meetings alone or not.

Q. There was one meeting to which he went alone and then you joined the meeting?

A. That is a meeting with Mr. Blair, April 4th.

Q. I will show you a document which I will have marked Government's Exhibit 32, and it is a memorandum of interview with Mr. Blair, as of April 19, 1922, and in the right-hand side has "4/21/22" then it has at the end the initials "H. K. S." I will ask you to read that document first.

[fol. 1433] Q. Have you read it? (Referring to Government Exhibit 32.)

A. I have.

Q. Don't you remember that you were in New York with Mr. Knox Smith the day he saw Mr. Blair but you didn't attend the conference?

A. No.

Q. See if I can refresh your recollection. I show you an entry on the same day, by Mr. Knox Smith, in his diary, and see if that does not indicate to you that you left on the train with him from New York for Hartford on the same day.

By Mr. Haight: That is not a proper question. The question should be whether it refreshes his recollection.

By Mr. Isseks: I will withdraw the question.

Q. Will you read the entry and see if that does not refresh your recollection that you were in New York on April 22, 1922, the day of the conference?

A. It has not refreshed my recollection, but it states I was. I have no recollection of it, but this appears to me as being true.

Q. You don't dispute you were in New York on that day?

A. No.

[fol. 1434] Q. You don't question you were on a train that day with Mr. Knox Smith for approximately four hours?

A. No. I have no reason to.

Q. To refresh your recollection, after the conference Mr. Smith told you what happened at the conference?

A. No, but I assume he naturally would.

Q. He would in his regular course of business?

A. I would say so.

Q. Will you look at Government Exhibit 32, dated April 21, 1922, and see if the contents of that document does not set forth in substance what was told to you by Mr. Knox Smith after the conference took place, on the day of the talk with you?

A. I would not remember it.

Q. Does it generally set forth what Mr. Knox Smith told you took place at the conference?

A. I wouldn't remember that.

Q. Do you have any recollection at all of what Mr. Knox Smith told you about the conference?

A. I have no recollection of being in New York or of what he actually told me about it.

Q. Do you have any recollection of Mr. Knox Smith's telling you he had a conference with Mr. Blair?

A. I undoubtedly knew he did.

Q. He kept you apprised of what was going on?

A. Undoubtedly.

Mr. Isseks: I offer the document. I am perfectly willing to have Your Honor defer the ruling on its admissibility.

[fol. 1435] By Mr. Middleton: Objection as registered, I assume?

By the Court: Yes.

Q. Do you recall that throughout this period there was a proposed license plan being considered between your company and the Owens Company?

A. No.

Q. Do you remember there was some discussion as to whether or not payments under this license plan—under a proposed plan—were to be conditional or absolute?

A. Well, that is in some paper you read.

Q. I am referring now to Government Exhibit 32, for convenience, which has not been received in evidence yet, and call your attention to somebody's handwriting on the righthand corner, "Copy to Flack and Dorsey", and ask you whether you can recognize the handwriting.

A. That is Mr. Herbert Knox Smith's handwriting.

Q. Does that not refresh your recollection these documents were circulated among the various executives of the company?

A. No, I have no recollection of it.

Q. Don't you remember as part of this very important matter of negotiations between your company and the Owens Company you sent copies of these documents to your prospective associates in the proposed Hartford-Empire Company, Messrs. Falck and Dorsey?

A. I would think it reasonable that they received copies but I don't remember sending them.

[fol. 1436] Q. You would be consulted before they were sent, would you not?

A. Not necessarily.

Q. Would not Mr. Knox Smith take the matter up with you?

A. I think he might naturally send them under his own volition.

Q. This is April, 1922, some seven months—I am mathematically wrong—six months before you finally made the Hartford-Empire deal in 1922.

A. Well, I assume they would be sent, Mr. Isseks, but I don't remember of their being sent out.

Q. My associate points out the Hartford-Empire deal really was agreed to long before the final documents were signed, is that so?

A. The general principles were.

Q. And the documents were signed as of a convenient date,—October 6, 1922?

A. That is right.

Q. So in April, 1922, you were keeping advised the prospective partners—if I may use the word—about your negotiations with Owens?

A. To some extent, Mr. Isseks; I don't know how much.

By Mr. Isseks: I am not pressing the admission of this, but I would like to call Your Honor's attention to the fact that the circulation of this document to Messrs. Falck and Dorsey does have a bearing on the admissibility.

By Mr. Sayles: I object to that. There is no proof of any of that.

[fol. 1437] By Mr. Isseks: I am not pressing it.

By Mr. Sayles: There is no proof it was circulated, even.

Q. Do you have any question, Mr. Smith, that copies of these documents were sent to Mr. Dorsey and Mr. Falck, after looking at Government Exhibit 32 and recognizing the handwriting?

A. I have no knowledge they were sent, Mr. Isseks.

Q. Who, in your company, would have knowledge?

A. I suppose Mr. Knox Smith would be the one to know to whom he sent copies.

Q. Would Mr. Knox Smith be in the habit of putting down copies sent to somebody and not sending them out to them?

By Mr. Sayles: I object to that as not binding.

By the Court: Yes, that objection should be sustained.

Q. I hand you a document marked for convenience Government Exhibit 33, which has on the top of it, "Questions raised by license plan" and a stamp: "Received William H. Honiss, April 13, 1922"; in the left-hand corner, of the last page, "H. K. S.—P."

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[fol. 1438] Q. Have you read it?

A. I have.

Q. Does this refresh your recollection that you received a copy of it at or about the time it was written?

A. No, this is directed to Mr. Honiss, asking him questions about patents, etc. I don't remember of receiving a copy.

Mr. Isseks:

Your Honor, I would like to defer—I offer that in evidence but I have no objection to Your Honor deferring the decision until argument is heard on it.

Mr. Haight: I think this falls in a different category, if Your Honor please, than any of the others. It is merely an expression of somebody's thoughts on some questions that were in Mr. H. K. Smith's mind. Now, I don't know upon what possible theory that could be admissible.

Mr. Isseks: I thought we were going to defer the argument?

By the Court: Mr. Honiss was a patent attorney at that time?

[fol. 1439] Mr. Isseks: Mr. Honiss was inside patent solicitor.

Mr. Haight: He was patent solicitor.

Mr. Isseks: He was a defendant in this case, not served because he was very ill; a co-conspirator. Mr. Herbert Knox Smith was a co-conspirator. Declarations.

Mr. Height: It is headed "Questions raised by license plan. 1. Are payments to be condition or absolute?" Then he goes along, and has several different headings. That general discussion has nothing to do with any fact.

Mr. Isseks: I am perfectly willing to limit the offer of proof to the item headed "II" on page 3, "Competition between gob and suction", although I think the entire thing is admissible.

The Court: That doesn't destroy the question of the issue of its admissibility.

Mr. Isseks: That is right. I think the question is whether, as Your Honor put it today, it was made by executives in the regular course of business, and conveyed to other executives. A declaration of one we charge to be a co-conspirator in the case.

By the Court: I think you may have your objection but the Court will reserve determination.

Mr. Middleton: May the record be clear, the other defendants will join in the objection.

By the Court: Yes.

Mr. Isseks: I am now going to hand the witness a document which my associates tell me might not be stipulated by any of these gentlemen as coming from their files. It [fol. 1440] has on it the statement, "I certify that this is a true copy of the original in the files or records of this company. E. F. Martin, Asst. Secretary and Asst. Treasurer, Owens-Illinois Glass Company." It is dated April 22, 1922, and purports to be signed by Herbert Knox Smith, addressed to Mr. Blair. Unless I am mistaken, I don't think there is any dispute as to the fact it is a true copy of a document sent by Mr. Smith to Mr. Blair. I would like to hand it to the witness and ask him to read it. I am perfectly willing to have it marked, subject to correction, as a document we obtained from the Owens-Illinois Glass Company sometime ago. I am perfectly willing to let them check and see whether they can find the original in their file.

The Court: It might be in the company file.

Mr. Middleton: I will look in this file and I can tell. (After examining same.) We have a copy, apparently, in our files, of the letter you are referring to.

Mr. Isseks: Is there any doubt about the fact the copy we have comes from your files?

Mr. Middleton: There is nothing on this to indicate it did.

By Mr. Isseks: You have a stamp on the original, Mr. Martin's stamp.

Mr. Middleton: The copy we have is fully typed, copied signature, and all, as though it is not a carbon sent to us in the first instance. It looks to be a copy made at some later time of a then-existing letter.

[fol. 1441] By Mr. Isseks: If there is any question about this being a document coming from your files—is there any question, as far as Hartford knows, this is a true copy?

Mr. Middleton: It bears the stamp of Mr. Martin. I would assume it was taken out.

Mr. Wall: As to our files, I simply don't know. I have no knowledge on the subject at all.

Q. Have you read it over, Mr. Smith.

A. Yes.

Mr. Isseks: I would like to show them Mr. Martin's stamp.

Mr. Middleton: That bears the same stamp as was used in all other cases to identify the paper as having been taken from the Owens' files. It doesn't identify the paper as being an original or one with a genuine signature, or anything of that kind, but merely that it was found in the files of Owens.

Mr. Isseks: The stamp says "I certify that this is a true copy of the original in the files or records of this company."

Mr. Middleton: I think "original" in that sense doesn't necessarily mean legally original document. A copy of it, however, was in the Owens' files.

The Court: Very well.

Q. Is there any doubt in your mind, Mr. Herbert Knox Smith wrote that letter to Mr. Blair?

A. No.

Q. I show you a diary entry for April 21 and April 22 written by Mr. Herbert Knox Smith, and see if that does not [fol. 1442] refresh your recollection that you went over a license plan, you and Mr. Herbert Knox Smith, for the purpose of sending it to Mr. Blair?

A. No; I have no doubt that I did.

Q. Does it refresh your recollection you went over this particular letter?

A. Not at all.

Mr. Isseks: I offer this letter, and I have no objection to Your Honor's deferring his decision in the matter, but I would like to ask the witness some questions. Possibly I can refresh his recollection with the letter in front of him.

Q. Don't you recall, Mr. Smith, that in the various negotiations at this stage between your company and the Owens Company there was talk of their being two separate branches of the automatic glass and machinery business, one suction feed and the other the gob feed?

A. Well, Owens Company often referred to their own machine, called the suction. Our conferences dealt with the gob feeder use.

By Mr. Middleton: Before getting too far away from the offer, please enter our objection.

Q. Don't you remember in your conversations you were contemplating Owens would proceed with the suction, if you had a settlement or adjustment, and you would proceed with the gob?

A. I don't think there was any question what Owens would proceed with. They had something they owned.

Q. Suction?

[fol. 1443] A. Suction.

Q. I am talking about the fact, didn't they have some kind of gob feeder devices, certain applications, and weren't they going to forget about them and let you gentlemen take the gob feeder?

A. Not necessarily.

Q. Wasn't that the conversation?

A. All these matters with regard to these negotiations covered various lines of questions we would discuss. I don't know as I get what you mean.

Q. I want you to look at the first full paragraph of page 2 and see if that does not refresh your recollection, "It was proposed the arrangement between us would practically divide the industry, suction to be controlled by Owens and gob to be controlled by Hartford-Fairmont".

A. Now, what was the question? (Question read.) My answer to that would be that the Owens owned and controlled their own suction process, and the negotiations with Hartford were undertaken because we had been in interference and had what we thought was a serious patent situation because of gob feeding. Now, naturally, the outcome, if we took a license under the Owens, gob-feeding patents of Owens, why, then Hartford would continue to go on and be a licensor of gob feeders.

Q. Wasn't it contemplated also Owens would stop any development or any licensing on gob feeding?

A. That would depend upon what kind of license we obtained from Owens.

Q. I am talking about what you were talking about, I am [fol. 1444] not talking about what you are now thinking. What you were talking about, you gentlemen, at that time, didn't you have in mind one company would go ahead with suction and the other company would go ahead with gob feeding?

A. I didn't have that in mind at that time, what Owens was going to do with their suction process. What was on my mind was what was going to happen to us, naturally.

Q. Look at this second sentence in the letter. Don't you remember you had in mind there was a distinct field for each process?

A. Well, I didn't write this letter.

Q. I understand that, but you were around at that time, you were general manager of the company, Mr. Knox Smith was general counsel?

A. I would think everybody knew and accepted the fact there were two methods of producing glassware.

Q. All right. There is no dispute about that. We are trying to find out the facts. Don't you remember at that time it was contemplated Owens would go along with suction and you would go along with gob, and leave each other alone on the two processes?

A. I cannot speak for Owens.

Q. What about what Hartford had in mind?

A. Hartford had in mind, naturally, to be allowed to continue to develop its own process, and we certainly didn't want to get into expensive patent litigation. We had lost money continually up to '21, and we were having a tough time of it. Now, we didn't see how we could afford to go [fol. 1445] into long patent litigation with the Owens Company.

Q. How did you happen to work it out? That is all I am trying to find out.

A. By getting rights under their patents, if a reasonable deal could be made.

Q. And was it part of the deal that Owens would stay out of the gob-feeding license business?

A. That is dependent on what kind of license we were going to get.

Q. I am asking you what you were trying to get. Were you trying to get that?

A. Our main interest was in the Hartford-Fairmont Company, how it could be protected, how it could be assured of a livelihood and increase its efforts in development and in research work, and we couldn't afford—we did not think we could afford any long, expensive litigation with the Owens Company, and that is why these negotiations started and covered such a long period of time.

Q. Didn't Mr. Knox Smith represent the views of his clients when he was corresponding and talking to the Owens people?

A. Not always. Some of his memorandums said quite frequently he was expressing his own views.

Q. But in the drafting of the license plan, didn't he go over that with you to be sure he was expressing the company's views, not alone his views?

A. In the drafting of the license plan, drafts 1, 2, 3, 4 and 5, there was a plan that was submitted, I suppose, but that plan would not necessarily be the views of our com- [fol. 1446] pany until it had been accepted by our board of directors.

Q. At this time, in April, 1922, was Mr. Knox Smith secretary of Hartford-Fairmont Company?

A. I think early in '22 he became an officer.

Q. And he wrote this on the stationery of the Hartford-Fairmont Company, did he not?

A. I don't know; I haven't seen the original. I suppose it was.

Q. When he was writing it, will you look at the letter and see if it doesn't refresh your recollection that he was setting forth the views of the company, namely, that the entire arrangement would result in the two different processes going their separate ways, Owens taking the suction field and Hartford-Fairmont taking the gob field; doesn't that refresh your recollection?

A. No, because I don't see the point you are trying to raise. Owens would naturally go wherever they want to with their suction process.

Q. Wasn't that the whole fight, the reason you were getting together, because they were infringing on your field?

A. The whole point of getting together was their interference in the Patent Office, which at one time we didn't consider amounted to a great deal, and then became more serious, and finally Owens had patents issued, and the situation then became quite serious.

Q. Don't you remember also there was a recognition, even if you had separate fields, that the two different processes, although separate, might reach a stage where compe- [fol. 1447] tition between the two would become doubly destructive and unstabilized?

A. Well, I cannot talk for the Owens Company.

Q. I am asking you to testify from your recollection, from the Hartford-Fairmont angle.

A. Our main angle was buying insurance and protecting what we believed to be our original broad invention. That is the reason we were dealing, or had the suggested deal, with the Owens Company, in order to buy insurance, protect our income, and protect our licensees, who were paying us money because, selfishly we wanted our income protected, but we had the additional obligation to protect people who were using our machines. In other words, we didn't want to leave them in a position where the Owens Company, if they saw fit under their own gob-feeding patents, could go out and sue them and might put them out of business, and that would adversely affect us.

Q. I am talking about another problem, I am sorry. Wasn't it natural, in addition to the problem of having one company take suction, Owens taking the suction and you the gob-feeding, there was a further problem, although they were different they might compete with each other and therefore you had to have some restrictions to prevent competition and destruction and unstabilized conditions?

A. Again, if the Owens were going out to license, and in a broad way, and we were going out to license, and both companies should license many more concerns, 'way beyond the consuming capacity, you would naturally have an overproduction.

[fol. 1448] Q. And you wanted to do something to stop that?

A. Our main consideration in all these negotiations was protection for the Hartford-Fairmont Company.

Q. In view of the possibility of the situation being created you just described, wasn't it thought at the time that there should be restrictions tending to preserve stability, that these were just as important as having the suction process and any future developments being worked out,—the necessity of restrictions?—I direct your attention to the last sentence in the paragraph you looked at before; see if that does not refresh your recollection.

A. Now what is the question?

Q. The question is whether you didn't have in mind in order to avoid destructive competition between suction and gob feeding, even though they were different, you would have to have certain restrictions imposed on each other?

A. You must bear in mind I am not talking about suction, that was the Owens'.

Q. I am talking of what you had in mind for your company.

A. That we might, unless we used good business judgment, go out and license more capacity, much more capacity, than was necessary for the normal consumption.

Q. Now one more question and then I will move along. Wasn't it the desire of your company on the one hand, and Owens on the other hand, as part of these negotiations—you attended a lot of the conferences, didn't you?

A. Yes.

Q. Wasn't it the desire to work out a division of fields [fol. 1449] between you, in the automatic glass industry, one to take suction and the other to take gob?

A. I think that just automatically was so, because both processes were being used, and the Owens used the suction process and our development was the gob process, and those were the two great automatic developments.

Q. You aren't suggesting Owens didn't have their own gob-feeding patents at the time of these negotiations?

A. They weren't using them.

Q. Weren't they talking about using them, and didn't Mike Owens express the thought they would fight you to the end if you didn't come to a compromise on the gob feeder?

A. I think they felt that way.

Q. My associates tell me the historical fact is they were using them. Does that refresh your recollection?

A. If they were using them at that time I can't tell you. At that time they were perhaps using one feeder to one machine, and two feeders——

By the Court: We will recess at this point.

(Short recess taken.)

[fol. 1450] (Afternoon recess)

Q. Mr. Smith, I am going to hand you again Exhibit 32 for convenience, which is Mr. Knox Smith's memorandum of the conference which he had with Mr. Blair on April 20. I am going to show you a poor photostat—my associate just located it—letter dated April 21, 1922, purporting to be from you to Mr. Dorsey, with copies to Mr. Arkell, Honiss, and Cunningham. I am going to use it solely to refresh your recollection. It has been stipulated as to genuineness but it is a poor copy. I will offer a good one when I get one. Does that refresh your recollection that Mr. Smith reported to you the conversation he had with Mr. Blair on April 20th?

Mr. Middleton: What is that?

Mr. Isseks: I am asking the witness by looking at that piece of paper whether that refreshes his recollection whether Mr. Knox Smith reported to him what transpired between Mr. Blair and Mr. Knox Smith. I will furnish copies of the letters. It is stipulated as to genuineness?

Mr. Wall: That is correct.

Q. Does that refresh your recollection that Mr. Knox Smith reported to you a conference he had with Mr. Blair on April 20th?

A. I think I said previously I thought he did.

Q. I think you were not so clear about it?

A. Well, that does not make it any more clear.

[fol. 1451] Q. You do remember that he reported to you that conversation?

A. I take it for granted he did.

Q. All right, sir. Now, going back to Government's Exhibit 34, which has not been marked in evidence, which is a letter from Mr. Knox Smith to Mr. Blair dated April 22nd, 1922, I again show you the diary of April 21, Item 2. I will stay right here and hold it for you,—and the entry for April 22nd. Am I correct in my recollection of your testimony that you did recall going over the license plan with Mr. Knox Smith which he was to send to Mr. Blair?

A. I did not say I recalled it.

Q. What is your present recollection?

A. I do not remember now going over it.

Q. If you look at the diary, does that help you at all?

A. The diary said that I did.

Q. And you do not question the diary?

A. No.

Q. And I believe when I was interrogating you about that letter, which is Government's Exhibit 34, not in evidence, when I asked you about some parts of it you indicated something that Mr. Knox Smith wrote in a memorandum which had some numbers on it might be a company policy as distinguished from a general letter that he wrote. I believe you gave an answer to that respect. If I am wrong, I am subject to correction.

A. Mr. Knox Smith wrote a great many letters on his own volition.

Q. When he prepared this license plan, et cetera, when he went over your plan setting up a company policy, I [fol. 1452] think that is what you said before?

A. The mere writing of a memorandum or negotiations and what took place at the negotiations to me would not represent a company policy until the negotiations have come to a conclusion and there has been an agreement made.

Q. What about a plan of proposal that he would submit for the other side on behalf of your company?

A. If that plan was the final plan and received the approval of my Board, then it would become a company policy.

Q. What about a plan that was approved by him and his brother, Mr. E. W. Smith?

A. As part of the negotiations?

Q. Yes.

A. I would not think that was a company policy until that plan had been put in execution.

Q. Didn't you consider that something the company was going——?

A. No, we were negotiating.

Q. On behalf of the company?

A. Yes, but come to no final conclusion.

Q. All right, but you were working, doing something on behalf of the company?

A. Yes.

Q. Now, there is reference in the letter which has not been marked in evidence, Exhibit 34, in this file. I think you refer to a license plan in which you said you did not dispute,—you approved. I had located during the recess four copies of this purported license plan and they all have on them stamps "Certified. This is a true copy of the [fol. 1453] original in the records of this company."

Mr. Haight: We haven't seen it.

Mr. Isseks: Signed "E. F. Martin, assistant secretary-treasurer, Owens-Illinois Glass Company." I am told by my associates that the Owens Company has stipulated that it came from their files. I would now like to have this marked and hand this to the witness.

Mr. Middleton: What is the exhibit?

Mr. Isseks: This is a document I am going to prove was prepared by Mr. Knox Smith and approved by Mr. E. W. Smith and the witness. It is Exhibit 35. I did not know it existed until I found it during the recess. I asked the boys where it was and they dug it up for me.

Q. Will you please look at that document, Government's Exhibit 35, for convenience, and see whether it does not refresh your recollection that that document was approved by you in conference with Knox Smith and E. W. Smith before it was sent to Mr. Blair on April 22nd, 1922?

Mr. Haight: I object. The fact, so far as the record shows now, it never was sent from our office. We don't know. We simply object for lack of identification.

Mr. Middleton: We haven't had time to check this to see if we have a record.

The Court: Read the question.

(Question read.)

The Court: Now is there an objection to that question?

Mr. Middleton: There is.

Mr. Isseks: I would like to point out the document which [fol. 1454] is not in evidence but which Your Honor has under consideration refers to a memorandum of same date from Hartford to Mr. Blair.

The Court: What exhibit is that?

Mr. Isseks: That is Exhibit 34, that is the first paragraph.

Mr. Wall: That is true. Then comes the paper, simply blank paper, no dictation marks even, simply happens to bear that date. Now that may be the paper. It may not.

Mr. Isseks: It has the stamp as having come from the files of the Owens-Illinois Glass Company.

Mr. Williams: It is simply identified as a piece of paper found in the files.

Mr. Isseks: Will the witness please read it? I think he will be able to tell us.

The Court: I think I will overrule the objection. The witness may answer the question when he is prepared to answer it if he can.

Mr. Isseks: I would like to have the stenographer read the question.

The Court: Read the question.

(Question read.)

A. No. This does not refresh my recollection, Mr. Isseks. As a matter of fact, we have hunted high and low in our files for a plan which we supposed Mr. Knox Smith sent to Mr. Blair. We couldn't find any record of it.

Q. You do not question that this is a copy of it?

A. I would not know. There are no marks on here to tell [fol. 1455] me that this is a copy of the plan that was sent.

Q, Will you look at Exhibit 34?

A. I know he is enclosing a plan but there is nothing here to denote that was the actual plan that was sent.

Q. I will ask you to look at Government's Exhibit 34, the first paragraph on the second page, you will see reference to Section 6. Look at Section 6 in there to see if it is not exactly that section he referred to. Is there any suggestion that has been manufactured by Owens?

A. Oh, no.

Q. Any suggestion the government manufactured this document?

A. Of course not. The only question was whether this represented the actual plan that was sent.

Q. I show you the diary entry for April 22nd of Herbert Knox Smith produced by your counsel pursuant to written request by the government, and ask you if this piece of paper marked Exhibit 35 was not approved by you and Mr. E. W. Smith and sent to Blair for endorsing?

A. A plan was approved by us tentatively.

Mr. Haight: I think the point is, Mr. Smith does not deny a plan was approved, but his difficulty is in identifying this as the plan because it has no marking.

Mr. Isseks: Then I ask Mr. Falck to produce a copy of the plan which according to this diary entry was sent to Mr. Falck.

The Court: If Mr. Falck can produce such copy he may do so.

Q. Secondly, I call your attention to the fact that the [fol. 1456] exhibit which I just gave you, Exhibit 34, quotes, and there is no dispute about that, quotes from page 2 word for word—I haven't checked it but I am gambling,—yes, here it is quoting word for word an excerpt from page 2. Do you want to check it with me?

Mr. Haight: We have checked it. It does.

Mr. Isseks: I am pretty good. I gambled. I did not know it. It was a gamble.

Q. Is there any question in mind, Mr. Smith, that Government's Exhibit 35 was approved by you in view of that identity of language?

A. Now, Mr. Isseks, aren't you asking me to approve in toto a plan that is outlined in this Exhibit 35?

Q. I did not hear the answer?

A. Aren't you asking me to approve in toto plan, Exhibit 35, as the one that Herbert Smith is supposed to have enclosed with the letter that he wrote to Mr. Blair?

Q. Yes, I am.

A. I can't do that because many drafts of plans have been made. I do not know whether this is the final draft or I do not know where it came from. There are no marks of identity on it. I just think I should not say this was the plan when I don't know that it was.

Q. I will take it step by step. Exhibit 34, there hasn't been any question as far as I know except as to admissibility?

Mr. Wall: Yes, there was, as to identity and admissibility.

Mr. Isseks: It has been stipulated as having been in the files of Owens-Illinois?

[fol. 1457] Mr. Wall: There is a paper in the files of Owens-Illinois of which that is a copy.

Mr. Isseks: That is all I am asking you to look at. It bears the signature in type Herbert Knox Smith, addressed to Mr. Blair, and the top has on it, Hartford Company, Hartford, Connecticut.

Q. I show you a diary entry for April 22, and I think you already testified that you approved a license plan at a conference between you and Mr. Knox Smith and E. W. Smith, both deceased?

A. That is right.

Q. So there was a license plan which was approved by you on April 22nd?

A. I think that is correct. But just what that plan was, I don't remember.

Mr. Isseks: We offer in evidence Government's Exhibit 35, Your Honor. I wish to point out word for word the copy therefrom in 34 is also a reference to Section 6, and Your Honor can look at the other Section 6 and see that it can't have reference to anything else. If Your Honor wishes to defer the admissibility of this document as before, we have no objection.

Mr. Middleton: This is under objection.

The Court: Yes. It will be deferred.

Q. Looking at Exhibit 35, page 5, paragraphs 5, 6, and 7,—see if it does not refresh your recollection that it was contemplated during negotiations in 1922 that Owens was not to license gob feed in competition with Hartford, and [fol. 1458] Hartford was to be a gob feed concern and Owens suction concern?

Mr. Haight: If Your Honor please, I hated to interrupt the proceeding to object, but it does seem to me again this question raised, what difference does it make what these people contemplated in 1922 if that isn't what they did? They could be the wickedest criminals known, but the law also permits a place for repentance. They had some ideas, Mr. Blair and Mr. Herbert Knox Smith, which they set down in the form of a memorandum. If this is the memorandum which Mr. Goodwin Smith approved, what difference does it make if finally they did not adopt that plan, and they did not adopt that plan.

The Court: The Court does not know whether they did or did not, and the government is taking the position that ultimately there was a plan adopted that these negotiations led up to and substantially incorporated those various negotiations into that plan, is that right?

Mr. Isseks: That is right.

Mr. Haight: If that is so, then that plan reduced to writing, signed by the parties, will be the determining thing in your Honor's mind as to the legal fact of what it is.

The Court: Yes, that is true, but I believe the Court is entitled to the history of the matter if such a history is in existence and can legally be presented.

Mr. Haight: That may be so, if Your Honor wants to take the time to take it. I don't think it will do anybody any good. I do not want to argue this thing over again. I think this is going to take a great deal of time. It already has, [fol. 1459] and I don't think in the final analysis it will get you anywhere.

The Court: Well, I have got to more or less rely upon the judgment of counsel as he proceeds with this matter. If time consumed is not commensurate with the benefits attained, we will stop it.

Mr. Isseks: Read the question.

(Last question read.)

A. If this is the plan that was sent, Mr. Isseks, of course I have no way of knowing it. Many times we draw up three or four or five or six or seven different drafts of a plan. I still say that the Owens Company had developed and owned outright the suction processes. That we were after protection for our own development in the gob feed processes. Now if we were going to take a license under the Owens patents and pay them for it, we certainly wanted at that time at least exclusive license under their patents which we thought were infringements of our rights, and we did not want to leave the door open so they could use their own patents which we were buying a license under. As far as their suction machine was concerned, that they had and that was their business. So you always had from the time of development of our machines competing processes.

Q. Will you be kind enough to look at paragraph 6 on page 5 and see if that does not refresh your recollection that

Hartford proposed to restrict the issuance of licenses in the container field so as to preserve the general principle of preventing over plant investment and over production as [fol. 1460] well as keeping the license out of the hands of objectionable and irresponsible parties?

A. My answer to that is this: that Hartford has always wanted a healthy situation in the industry, that from the beginning we would prefer to have, just as a rough example, sixty or seventy or eighty good licensees rather than a hundred and fifty or two hundred weak licensees.

Q. You stated that position of Hartford in your negotiations?

A. I don't know whether I did or not.

Q. You don't question whether you did?

A. I have just forgotten.

Q. But that was always a policy you stated?

A. It might and might not.

Q. Doesn't paragraph 6, the first part of paragraph 6, refresh your recollection in that connection?

A. That is what I said at that time.

[fol. 1461] (4:00 O'clock.)

Q. Did you not also take the position, similarly, Owens should restrict the licensing of its suction feeder and all developments thereof in such a way as to maintain a similar position?

A. I don't remember that we did. We might have.

Mr. Isseks: I understand Your Honor is going to defer decision on this document.

Q. You remember, do you not, that later on, in April, there was another meeting, and the letter I showed you just for your recollection—maybe you did not read it all—all I want you to do is to see if you can refresh your recollection—read the first paragraph. Maybe you remember it before.

A. I could not read it all.

Q. I will ask you another question: Do you not remember attending another conference, April, 1922, with Messrs. Bartlett, Biggers and Blair?

A. I don't remember. I may have.

Q. I will show you a document which is dated April 28, 1922, and it recites, "Memorandum of Interview, April

26-27, 1922", and is signed "Knox Smith". See if that does not refresh your recollection?

(Witness shown document.)

Q. Have you read this?
A. I have.
Q. To refresh your recollection, you attended the conference?
A. I think there is no doubt I attended the conference.
[fol. 1462] Q. Does the memorandum reflect what transpired at the meeting between you four gentlemen?

Mr. Haight: Referring to what meeting?
Mr. Isseks: The meeting with Messrs. Biggers and Blair.
Mr. Haight: The other part I am particularly interested in, because I do not want that to go in unless it is understood we are not waiving any privilege.
The Court: That is the interview with Mr. Bartlett. Are you insisting upon that.
Mr. Isseks: No, Your Honor. My offer begins at the bottom of the page.
The Court: Very well.
Mr. Emery: Note our objection.

Q. Did you answer?
A. I said I was at the meeting. I don't remember the details.
Q. You don't remember the details?
A. No. And my answer would be the same to this as to the other memoranda: I don't remember.
Q. That in general it sets forth what took place?
A. I would think so, although I have no recollection.

Mr. Isseks: I offer it in evidence.
The Court: It will be admitted over objection.

Thereupon, Government's Exhibit No. 36 was read to the court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Now, Your Honor, first of all, the offer was made only with regard to the part beginning at the [fol. 1463] bottom of page 1. Of course we do not agree with counsel for Hartford that the first part is privileged. We are not interested in it. I do not want to make an argument why I think it is not privileged.
The Court: All right.

Q. I direct your attention to the first full paragraph on page 3, and ask you whether that does not bring back to your recollection the fact first that Mr. Knox Smith took upon himself the preparation of a memorandum of the situation as it then stood; that he prepared a first draft which he submitted at the conference on the second day; and then said he would send a final draft to Mr. Blair as soon as he could get it out within a fixed period?

A. What is your question?

Q. Do you remember that was part of the program: first he prepared a memorandum of the situation, a draft; and then said he would get out another one?

A. I think I remember his working on a draft that night. I think I told him I was going to the theatre, and he could go to work. What was in it I don't know; I don't remember.

Q. See if I can refresh your recollection. I show you a diary entry for April 26, a diary entry marked 2; and I also show you a diary entry for April 27; and I show you a diary entry for April 28, the first item; and then I show you also a diary entry for April 29, particularly the item marked 2. Does that refresh your recollection that you went over this memorandum of the general situation with Knox Smith?

[fol. 1464] A. I think I did; but I don't remember the draft or what was in it.

Q. See if I can refresh your recollection. I show you a document which purports to be signed, "Herbert K. Smith", written out, dated 4/27/22; and has on the top of it Roman 1, marked "Points of Agreement". And I should like to have it marked the next number.

Mr. Isseks: Your Honor, I hand it to the witness. I am told by my associates that it is stipulated as to genuineness by the Owens-Illinois Company, on page 2 of the stipulation, as coming from their files. Perhaps we can facilitate matters by——

Mr. Middleton: That is in the Class 2 Stipulation: it was found in our files: with no agreement as to its genuineness or anything of that sort.

Mr. Isseks: My associate says you stipulated as to genuineness.

I think perhaps it would help matters, Your Honor, if I also had marked a letter which has got a stamp on it, letter dated April 29, 1922, purporting to be signed by

Herbert Knox Smith, general counsel. It is addressed to Mr. Blair; and having a stamp on it certifying it is a true copy of the original in the files of Hartford-Empire. It is attached to another document, and I will take the letter off, only.

The Court: I am not going to ask Mr. Smith to read [fol. 1466] that document. It is lengthy—some twenty pages—and we are close to quitting hour. The light is not so good as it might be. I think that Mr. Smith may read that over the evening.

Mr. Isseks: I have copies of this document marked Government's Exhibit No. 38, which I will hand to Mr. Wall.

Mr. Wall: Thank you.

Mr. Isseks: May I give Your Honor one? (Copy given Court.)

May the witness be permitted to take that copy with him?

The Court: Surely. The bailiff may recess court.

Mr. Wall: Your Honor, were we to discuss the transcripts?

The Court: In chambers. The bailiff may recess court until ten o'clock to-morrow.

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Mr. Isseks: Thank you very much.

Now I understand from counsel for Mr. Falck that certain documents, which I ask to have him produce, documents having been indicated on copies thereof, were received by Mr. Falck, were in fact received by him. I do not care to have them produced. Mr. Stewart came up to me prior to the session and said they were received.

Mr. Haight: We concede that.

The Court: If it is stipulated they were received, that is sufficient. Proceed.

Mr. Isseks: I have been going over these various exhibits in connection with the proposed memorandum to be sub- [fol. 1467] mitted to Your Honor. There is one of the Herbert Knox Smith memoranda, namely, Government's Exhibit No. 22, which I believe, with one question to the witness, will put it in the same category as Government's Exhibit No. 26, and some of the others. I should like to clear that up so that we will not have to cover that kind of a document in our memorandum.

Q. Mr. Smith, you have already read a memorandum which is marked Government's Exhibit No. 22, and which is of an interview which you had with Mr. Knox Smith and Mr. Bartlett, on the one hand, and Mr. Ashcraft. I ask you to go over that and see if that is not in the same category as the ones you have already identified, namely, it sets forth generally what transpired at the conference between you four gentlemen.

Mr. Haight: I do not like the characterization "in the same category".

(Question withdrawn.)

Q. Please look at it and see if it does not refresh your recollection that what is set forth there correctly reflects what transpired at that meeting of November 10, 1921, between you four gentlemen?

A. Mr. Isseks, I thought I answered about all these memorandums. I said I was at the meetings; that I could not remember in detail about the various subjects, as to who said what, and when it was said, and how it was said; but that it was my opinion that these topics were discussed by all of us. As to whether every topic was discussed, I [fol. 1468] could not remember.

Q. Do they generally set forth what transpired?

A. I don't know whether the word "generally" is the proper word.

Q. I took your word. You volunteered the word yesterday. I ask whether they correctly reflect what transpired?

A. Generally, I am quite willing to say.

Q. They generally set forth what transpired?

A. Yes, as far as I can remember.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It will be admitted.

Mr. Emery: May we have our objection?

The Court: That is understood.

Q. Mr. Smith, as we adjourned, you were handed Government's Exhibit No. 37, which for the record I will identify as a memorandum dated 4/27/22, which purports to be signed by Herbert Knox Smith, and has the first part of it "points of agreement". I ask you, Mr. Smith, whether that is the document which you went over with Mr. Knox Smith in April of 1922; and in that connection I again refer to the diary entry of April 29th, Item No. 2, and see if that does not refresh your recollection.

The Court: Which one are you referring to?

The Witness: No. 37. Mr. Isseks, it is quite obvious that these points of agreement memorandum here refers to and covers many of our previous conferences. As to whether this was the actual document sent with Mr. Herbert Knox [fol. 1469] Smith's letter, I cannot tell you. We have searched diligently—I am so advised—we searched diligently in our files to find the document, or a copy of the document, that was sent to Mr. Blair by Mr. Smith, and we have not been able to find it. There is not any question, because it is so obvious, that this particular memorandum does cover a number of points previously discussed. Whether this was the one that was sent, I could not tell you. And I have a further reason for taking that stand, because once we had an experience where we made four drafts of a proposed agreement, and, by mistake, the third draft was sent on to the parties; the fourth draft only had one article changed; the third draft as it went changed the whole contract quite a bit. I have no way of knowing that this was the actual draft sent.

Mr. Isseks: Maybe I can help you. I ask Mr. Middleton or Mr. Williams to produce the original of that document right now. They have it in court. It came from the files of Owens-Illinois.

Mr. Middleton: The original of which documents?

Mr. Isseks: Numbers 37 and 38. 38 is the letter of April 29, 1922, from Mr. Knox Smith to Mr. Blair, and Number 37 is attached to it. I want the original documents. I do not want any dispute about this. He says he is a little doubtful in his mind.

The Court: Number 38——

Mr. Isseks: Is the letter from Mr. Knox Smith to Mr. Blair. It is on page No. 2 of the stipulation. They stip- [fol. 1470] ulate that there is no question as to genuineness.

Mr. Middleton: May it please Your Honor, as we said yesterday, that stipulation—there is a stamp on that TNEC document which should not be misconstrued.

Mr. Isseks: I want the documents.

Mr. Middleton: Pardon me, please, until I make my explanation. That stamp says, "This is a copy of the original which is on file". As I said yesterday, that was not intended to mean that the actual original document, bearing original signatures, or anything like that, was in the file; but that it was a copy of whatever paper was in the file.

In this instance we have here a letter dated April 29, 1922, but it is not in any sense an original. It itself is marked as being a copy of something else. The signature of Mr. Smith is typed on it. It says, "Copy" at the top. We have that paper, and it is that paper of which the government has a copy. But we do not have anything that is an original at all. It is not even on the stationery of Hartford.

Mr. Isseks: If Your Honor please, there is a stipulation signed by counsel, saying they will not dispute the genuineness of these documents. If they do question it, I ask for the immediate production of the original document, and, if it has been destroyed, I want to know who destroyed it.

Mr. Middleton: It is all we have, and all we have had.

[fol. 1471] The Court: That is all you have in your files?

Mr. Middleton: Yes.

Mr. Isseks: Is that all you have in the files of the Owens-Illinois Glass Company?

Mr. Middleton: Yes. The government took these records in 1938. They may very well have the originals. We do not know.

Mr. Isseks: All we have are the documents here with the stamp on: "I certify this is a true copy of the original in the files and records of this company. E. F. Martin, Assistant Secretary and Assistant Treasurer." They lulled us into security. They tell us in a stipulation that it is a true copy, and admit the genuineness of the document. If there is any question about it, they must produce the original.

Mr. Haight: Is there any question of the disputed document?

Mr. Isseks: I don't know of any.

Mr. Haight: The question is to Mr. Smith, can he identify this as something sent to Mr. Blair at a certain time. He says he cannot positively identify it. There appears in the files of Owens-Illinois a letter transmitting a memorandum which seems to tie up with the title of that particular document Mr. Smith now has in his hands, Government's Exhibit No. 37.

Mr. Isseks: Do you question that is a copy of the document?

Mr. Haight: We cannot say positively, in view of Mr. Smith's testimony. Why do you not offer it circumstan- [fol. 1472] tially with the letter, with Mr. Smith's testimony, and do the best we can on it; and that is all. There are lots of cases and times when things cannot be proved because of lapse of time, death, and things of that kind. That is the best we can do. If Owens-Illinois can get it, why not make a demand? I am not going to try to run your case. I am going to try to ameliorate the dispute, if I can.

Mr. Isseks: There is a stipulation which has been signed by Owens-Illinois counsel saying that they will not question the genuineness of these documents; similarly both No. 37 and No. 38.

The Court: What counsel signed that?

Mr. Isseks: Owens-Illinois.

The Court: What individual?

Mr. Middleton: I think I signed the stipulation.

Mr. Isseks: And Lloyd T. Williams.

Your Honor, this is a very important document in this case.

The Court: Do counsel say they have no other document of that character or kind except the one now exhibited?

Mr. Middleton: Yes, Your Honor. So far as the letter is concerned, we have here in court our official file, which is the only file. It has this typed copy which I described. We have nothing at all to produce; and we have not had, so far as I know. These files have been made up since TNEC days.

[fol. 1473] Mr. Isseks: May I make a suggestion, there was prepared for counsel file a duplicate copy by the government; and that counsel make an offer to find out whether the original is still in the files of the company, in view of the certificate that it is a copy of an original, and the likelihood that the originals were kept separate. Certainly a letter is generally kept with a signature on it, and it is a document which purports to have a signature on it.

Yesterday I said I was taking this Government's Exhibit No. 38 from another copy, which was another copy of this very document. Perhaps they made a number of them for the TNEC representative; they kept the original either in a vault or a separate file.

In view of the fact that the witness will not identify it as being the one he went over with Herbert Knox Smith, I think it is important, from the Government's angle certainly, to find out whether or not the original document is still in the files of the Owens-Illinois Company.

Mr. Middleton: All I can say is what I have said: we just do not have any other file. We do not have any place to keep originals. We do not have the original of this letter anywhere else. If we do not have it in this file, we do not have it.

In response to what Mr. Isseks has said—I know he said it in good faith—this calls for some explanation. When the representatives of the government went through these files in 1938, they took physically with them literally hundreds, [fol. 1474] if not thousands, of original documents. When we started to prepare for this case, Your Honor, and got out a stipulation we found we did not have, we lacked, literally hundreds of documents which were once in our files and which they have taken. The only way we have been able to supplement our files and complete them so that we would have a single copy of everything the government has, and what they put in their stipulation, was to arrange in New York at a conference last summer for the government to furnish us what they had; and we then had to copy, not what was in our files, but what the government had. With hundreds of documents, we could only procure a single copy of it by copying what the government had.

It may well be that the original of this letter is in Washington. All we have is a typed copy. I make that explanation so that we will not be under any cloud here as trying to conceal something.

The Court: Will counsel cause a search to be made in the files of Owens-Illinois?

Mr. Middleton: Yes; but I know how fruitless it will be, because all of these files are under my personal care.

The Court: I wish you would do that and report tomorrow morning what success, if any, you have had on that.

Mr. Isseks: I apologize to Mr. Middleton. I did not know the facts that he stated. My association with the government started in 1939, long after the TNEC hearing. I will at recess telephone Washington and see if we can locate [fol. 1475] the original document. I wish to apologize to Mr. Middleton. If they have it we will have it sent here, perhaps by tomorrow.

Q. I show you Government's Exhibit No. 38, and ask you if at any time you went over that document with Mr. Knox Smith before it was sent to Mr. Blair?

A. This is a letter merely of transmittal of a document, plan or report, and I would not naturally see that.

Q. You said something before about a diligent search—I think those were your words—made on behalf of Hartford-Empire for a copy of Government's Exhibit No. 37, which is a memorandum on points of agreement and disagreement——

Mr. Haight: No, I think he was referring to the other agreement we had the other day. His testimony yesterday was as to another agreement, namely, a draft. This is not supposed to be a draft; this is just a memorandum. The draft you have already offered. That is what I understood Mr. Smith's testimony to be related to. Am I correct in that, Mr. Smith?

The Witness: All I remember is that these negotiations finally came to nothing; but at some time, along about this time, Herbert Smith sat down and sent to Mr. Blair something like that or a memorandum. Now in referring to that memorandum, I asked one of our attorneys what it was, because I did not remember it; could I see a copy of it; and they said, "We have searched the files diligently for four or five months, and that we cannot find it."

Q. You asked your attorney last night?

A. No, no. This was back ten days ago.

[fol. 1476] Q. Within the last ten days you tried to have someone associated with your legal staff——

A. No, I asked.

Q. He said they could not find it?

A. Could not find it.

Q. Your counsel thinks you are referring to the document called Government's Exhibit 35. My inquiry is whether you are referring both to No. 35 and to No. 37?

A. No, I was only referring to something like that.

Q. Like No. 37?

A. Yes, sir.

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Q. You don't know whether Mr. Knox Smith sent the points of agreement or disagreement to Mr. Blair?

A. As I remember, he was going to do it. When or how he did it I have no recollection.

Q. It was done during the negotiations?

A. Towards the end of the negotiations.

[fol. 1477] Q. The early phases of the April negotiations?

A. I do not place the date, Mr. Isseks.

Q. Mr. Knox Smith would not send Mr. Blair a document that was a draft which would have his signature on it, signed Herbert Knox Smith?

A. My trouble is that I don't know that it was a draft sent.

Q. You know that something was sent?

A. As I remember, he was going to send something.

Mr. Isseks: Your Honor, there has been a stipulation by Owens that they will not question the genuineness of Government's Exhibits Nos. 37 and 38. The witness recalls that a memorandum of agreement and disagreement was sent; and my recollection of his testimony is that he went over such a memorandum with Mr. Knox Smith.

Q. Is that not right?

The Witness: I discussed phases of it with Mr. Knox Smith. I don't know whether I read the memorandum or not.

Mr. Isseks: I offer the document in evidence.

The Court: It may be admitted, over objection.

[fol. 1478] Mr. Haight: I was talking to Mr. Stewart and I didn't hear 38. Did Your Honor admit it?

The Court: That is admitted over objection.

By Mr. Haight: Would Your Honor hear me for just a second on that? It seems to me that comes in the category—I mean 37—of those that should be reserved because there is nothing, as I understand it, to indicate that this witness went over this particular document and can now testify that it is in substance what was agreed upon, and therefore if it is to be admitted, it would have to be upon one of the grounds that we are now considering.

By the Court: Well, he goes a little further, here, than in the former cases. He says that a document of this character was gone over by him with Mr. Herbert Knox Smith, and that a document similar to this one was mailed by Mr. Smith to Mr. Blair. Now, 38 is a letter that accompanied the points of agreement, 37, to Mr. Blair. It is not an individual letter like #15.

By Mr. Haight: I care nothing about the letter. The thing I was talking about was Exhibit 37, where Mr. Smith purports to recite—I mean Mr. H. K. Smith—points upon which Hartford and Owens had agreed or disagreed, and the fact as to whether they had agreed and disagreed, as set forth in that memorandum, I thought must be more fully established than is done by simply offering that kind of a letter.

The Court: It seems to me the witness has fairly well identified the points of agreement as being a document that [fol. 1479] is similar to the one he went over with Herbert Knox Smith.

Mr. Haight: Well, if your Honor thinks so.

The Court: I think so.

(Thereupon Mr. Kramer read Government's Exhibits 37 and 38.)

Q. Now, Mr. Smith, you remember that after the various meetings in April, that you and Mr. Knox Smith conferred with Messrs. Blair and Biggers at the Ritz-Carlton some time in May, 1922?

A. No, I don't remember.

Q. I am trying to refresh your recollection. Don't you remember a time came when they gave you a piece of paper which you gentlemen took to a meeting of the executive committee held at the Dauntless Club at Essex, Connecticut, on May 15, 1922, and turned the proposition down?

A. No.

Mr. Isseks: I don't want to mark, at this time, the minutes of the meeting of the executive committee of May 15, 1922, but I would like to have your counsel stipulate there was a meeting on that day and who was present, and particularly one item.

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[fol. 1480] Mr. Isseks: Will you stipulate who was present and what is set forth in Item 9?

Mr. Wall: Present: Messrs. Arkell, Honiss, Heintzelman, Peiler, Falck, Dorsey, Goodwin Smith, Knox Smith and E. W. Smith.

Mr. Isseks: Item 9 relates to Owens.

Mr. Wall: Item 9 or paragraph 9 in the minutes: "The Owens matter was then taken up and their offer of May 11 was submitted and flatly rejected. The general "feeling [fol. 1481] was any contribution for the H-F should be based on net income and not gross income."

Mr. Isseks: There are more terms in there; I think that suffices for the present. That is all we want, and later on we will refer to others, or if you gentlemen want to you can put the entire minutes in.

Mr. Emery: I think it will be clear none of the gentlemen have made the stipulation except the Hartford-Empire.

By the Court: That is correct.

Q. Having in mind what you heard read, there was a meeting at the Dauntless Club at Essex, Connecticut, and that Item 9 of the minutes shows that you rejected the offer submitted by Owens dated May 11th, I show you first a document which has no date on it, and it has in handwriting,—which I am going to ask you to identify,—words which I interpret as "Rev'd. May 15, '22" at Essex.

The Witness: "Received".

Q. All right, I will take that as "received", although you may change your recollection or understanding. Whose handwriting is that, to your best recollection?

A. To the best of my recollection that is Mr. Honiss' handwriting.

Q. On the top it says, "From Blair and Biggers". Whose handwriting is that?

A. That is Honiss'.

By Mr. Isseks: I would like to have that marked.

The Witness: Now, this is not—I don't know who—it is [fol. 1482] an inside paper; it is not from Mr. Blair and Mr. Biggers.

Mr. Wall: What is that?

By the Witness: It is an inside paper. It is not any document received from Mr. Blair or Mr. Biggers.

Q. It says on the top, "From Blair and Biggers", doesn't it?

A. Yes, that is what it says, and Mr. Honiss has made a note "From Blair and Biggers", but this is a Hartford inside paper.

Mr. Isseks: We better find it. Let's get the original.

By the Witness: It is not signed and it is not dated, except the date of receipt.

Q. Maybe I can help you out a little further. I will have this one marked—I will try to refresh your recollection—19 years ago—mark this one 39. (So marked.)

Q. I show you another document which has been marked Exhibit 40, on the back of the second page for the record, and it is dated May 17, 1922, photostatic copy of document on the stationery of Hartford-Fairmont Company, and purports to be signed "Herbert Knox Smith", addressed to Mr. J. E. Blair. Unless I am misinformed there is a stipulation as to the genuineness of this document; you have a copy of it. Do you recognize the signature on this document as the signature of Herbert Knox Smith?

A. Correct.

Mr. Middleton: May we have the identification of this document?

Mr. Isseks: I am sorry, I don't know whether this comes [fol. 1483] from your files or Hartford's file. It is a document dated May 17, 1922, on the stationery of Hartford-Fairmont, signed Herbert Knox Smith, addressed to Mr. Blair at the Owens Bottle Company.

Q. Did you say this is Mr. Knox Smith's signature?

A. Yes.

Q. I direct your attention to the first paragraph, and see if that does not refresh your recollection that on May 11, 1922, the document which has been marked Exhibit 39, or a document in the same words of which this is a copy, was handed to you and Mr. Knox Smith?

A. Mr. Isseks, I would have said, from memory, we had never received a definite proposal, but this letter written by Mr. Knox Smith says that we did consider a plan which was submitted to me, and there must have been some plan submitted.

Mr. Haight: What did you say?

The Witness: I assume, therefore, there must have been a plan submitted, although I don't remember the plan.

Mr. Isseks: Your Honor, my associates made a demand sometime ago upon Mr. Middleton to produce from the files of Owens, a copy of this document. Mr. Middleton says there is none available in the files, and we have no reason to dispute that.

Mr. Middleton: Copy of what?

Mr. Isseks: Copy of the document coming from the files of Hartford—1943—which has a number in the righthand corner.

Mr. Middleton: That is true. I never saw this paper and [fol. 1484] I cannot find it.

Mr. Isseks: I have no reason to dispute it. I said that.

Q. Perhaps I can refresh your recollection. Look at Mr. Knox Smith's diary entry of May 11th and see if that does not refresh your recollection that at the conference of May 11th Mr. Biggers handed the memorandum to you two gentlemen, of two and a half pages.

A. Well, Mr. Isseks, it is quite obvious that we had a directors' meeting and some kind of plan must have been submitted or they would not have acted upon it. Also, I would say, Mr. Knox Smith would so inform Mr. Biggers; that is quite right.

Q. Do you want to say anything more?

A. No; but I am a little bothered about this.

Q. You identified the handwriting as that of Mr. Honiss?

Mr. Wall: Let him identify what he was referring to.

By Mr. Isseks: He said he was a little puzzled about this—meaning Exhibit 39.

The Witness: Therefore, I assume Mr. Biggers or Mr. Blair did hand to some of us a plan that was considered, and the record so shows.

* * * * * * *

[fol. 1485] Q. One more question: You recognize that as the handwriting of Mr. Honiss?

A. Yes.

Mr. Isseks: I offer both documents in evidence.

The Court: Over objection, they will be admitted.

Mr. Isseks: I would like to have Mr. Lewis read them both.

(Thereupon such documents were read by Mr. Lewis.)

[fol. 1486] Q. Mr. Smith, will you look at Mr. Knox Smith's journal entry for May 17, 1922, and see if that does not refresh your recollection that he went over with you and his brother, E. W. Smith, Exhibit 40, which is a letter of the same date to Mr. Blair, and that you approved the letter?

A. I think that must be true, Mr. Isseks.

Mr. Isseks: Your Honor, at this time I would like to have marked in evidence a document which is dated May 26, 1922, from J. C. Blair to Herbert Knox Smith, and I have marked it Government Exhibit 41, for convenience, and this document has been stipulated as genuine by Hartford, and purports to be a reply to Exhibit 40.

Mr. Haight: Do you offer it in evidence now or are you just marking it?

Mr. Isseks: I am offering it in evidence.

Mr. Emery: I object to it.

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[fol. 1487] Q. Can you recognize the handwriting where it says: "Copy to Mr. Dorsey, Mr. Falck, Mr. Arkell, Monongah"?

A. It is very indistinct.

Q. The photostat is very indistinct?

A. Yes sir.

The Court: Is it in the same handwriting as "From Mr. Blair and Mr. Biggers"?

Mr. Isseks: No sir, I will stipulate it, I don't think it is.

By the Witness: I think it is in the handwriting, as Mr. Wall has interpreted, apparently of someone at the addressee, namely Hartford.

Mr. Isseks: If we had the original, the witness might be able to identify the handwriting, if counsel know who it is.

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[fol. 1488] The Court: You are offering Exhibit 41?

By Mr. Isseks: Yes, Your Honor.

The Court: It may be admitted over objections.

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[fol. 1489] Mr. Isseks: Your Honor, during the recess Mr. Stewart of counsel for Corning and Mr. Falck, advised me Mr. Falck received a copy of Exhibit 41, which is a letter from Mr. Blair to Herbert Knox Smith.

Mr. Sayles: That is correct.

Mr. Middleton: I think it would be in order to ask whether the copy was received from Hartford.

Mr. Isseks: I just assume so.

[fol. 1490] Mr. Sayles: It was received from Hartford.

Mr. Isseks: I thank you.

Q. I hand you document which has been marked Government Exhibit 42, for convenience, dated June 17, 1922, which purports to be a memorandum signed "Knox Smith", of a conference the day before, which he had with Mr. Blair and Mr. Biggers, and I direct your attention to the stamp on the left-hand corner and ask you whether you can identify that stamp.

A. This is the stamp marked "Received W. H. Honiss June 17, 1922."

Q. That is the stamp Mr. Honiss used at the Hartford-Fairmont Company at that time, did he not?

A. I assume so.

Q. You have seen the stamp?

A. I wouldn't recognize the stamp, but I assume he received the document at that time.

Q. Mr. Honiss, you testified, was an official of the Company?

A. He was our patent attorney.

Q. He was on an employment basis rather than being outside counsel?

A. Correct.

Q. Will you please look at the document, will you be kind enough to read it,—and I will ask you then some questions.

[fol. 1491] (Witness reads the memorandum.)

Q. Does that refresh your recollection that Mr. Knox Smith reported to you the results of his conference with Messrs. Blair and Biggers?

A. It does not particularly refresh my recollection; but I have no doubt that Mr. Knox Smith gave me some report, verbal or otherwise.

Q. Do you have any recollection?

A. No, I don't remember this particular memorandum.

Q. Does the memorandum set forth generally the report he gave you about the conference?

A. I don't remember that. I know that Mr. Smith would report to me, and I think probably he would report to me verbally such a conference.

Q. The memorandum itself indicates that Mr. Honiss received a copy of it, does it not?

A. It does.

Mr. Isseks: I offer it in evidence. Here is a document that went from a gentleman, then secretary of the company, to another gentleman, who was an employe of the company, called a patent solicitor. Besides, the witness has said he has no doubt that Mr. Knox Smith reported to him verbally along the lines of the document.

Mr. Haight: I don't think he said that. He said he reported verbally; but not along the lines of the document.

Mr. Isseks: I offer it in evidence.

Mr. Haight: I think this falls into the same category as the instruments Your Honor is holding for further consid- [fols. 1492-1497] eration, because it is a recitation of a conference with Messrs. Blair and Biggers, at which Mr. Smith was not present.

* * * * * * *

[fol. 1498] The Court: I think it would be well at this time to defer the acceptance of this offer.

Mr. Freed: There is just one thing I should like to make clear to Your Honor, and that is this: this document, as [fol. 1499] many of these others which relate to conversations that were had between people other than Knox Smith and the individual with whom he is corresponding, is not offered in any of these cases for the purpose of proving the truth of those conversations; but is offered for the purpose of showing intent and the inducement on the part of the Hartford people or Knox Smith for his continuing in the conspiracy; and it does not go and is not offered for that purpose, as I indicated to Your Honor in line with this Corn Products case.

Mr. Isseks: I think there will not be any misunderstanding. We offer it for the truth of what Mr. Herbert Knox Smith says; we do not offer it for the truth of what Mr. Blair says; it is for Blair's inducement. If, as and when we show Mr. Blair in the conspiracy, if he was in the conspiracy, then it is also offered for the truth of what he said.

We are not trying to go into the refinement as to the date when he got into the conspiracy. Certainly if it took place before Mr. Blair got into the conspiracy, then it is only offered as far as Mr. Knox Smith, report of what Mr. Blair said as showing inducement to Mr. Knox Smith to go forward.

Mr. Wall: With that statement, that narrows the points of difference between us, Your Honor. We have not understood there was any limitation at all upon the purpose for which they were offering it.

The Court: I had not understood up to this time that [fol. 1500] there was any limitation. I had inferred, of course, the purpose of the offer was to go to the question of intent.

Mr. Wall: That would be one fact, yes.

Mr. Isseks: That is right.

Mr. Wall: There is one further thing. I think Mr. Isseks indicated he would also intend to claim that Mr. Knox Smith correctly and truthfully and to the best of his ability stated the things as he understood them to be correctly.

Mr. Isseks: That is right.

Mr. Wall: Those two points will considerably narrow the field of controversy between us, I think.

Mr. Haight: That case I referred to is Mayola v. United States, 71 Federal 2nd, 65.

Mr. Isseks: If the Court finds at the conclusion of the testimony that Mr. Blair or Mr. Biggers or Mr. Owens or the Owens Company was a conspirator as early as the time of one of these interviews which is recorded by Mr. Knox Smith, our position then is that Mr. Knox Smith's report is a report of the truth of what both gentlemen said,—both groups. If, on the other hand, Your Honor finds he was not a conspirator at that time, then what Mr. Knox Smith reports that Mr. Blair or Mr. Biggers or Mr. Owens says is only offered as showing the inducement to the Hartford-Fairmont group.

That will all be clarified in this memorandum that Mr. Apsey is now preparing. But I have no objection to deferring the matter. On the other hand, I should [fol. 1501] like to see if I can refresh the witness's recollection.

Q. Please look at page 3, paragraph 8, and see if that does not recall to your mind that the Owens group were saying that, "If we cannot work this thing out between us, the Owens group will license some one in the non-container field, and thereby produce a real competitor to your associates, the Corning people"?

A. No, it does not.

Q. It does not refresh your recollection?

A. No, sir.

Q. Do you not remember that took place?

A. No, sir.

Q. Do you deny that it took place?

A. That they ever said that?

Q. Yes.

A. Not that I remember.

Q. Looking at paragraph 8, does that not refresh your recollection that Mr. Knox Smith reported to you that Mr. Blair took that position?

A. Mr. Isseks, I am trying to be quite frank with you. I don't remember that Mr. Knox Smith reported to me any such statement. It is rather embarrassing to keep saying I don't remember, but I do not.

Q. Mr. Knox Smith was a man who was very careful and accurate in statements he made?

A. A very honorable man.

Q. A man of integrity?

A. Yes, sir.

[fol. 1502] Q. And would never have reported anything unless it took place?

(No response.)

Q. I now hand you a document marked as Government's Exhibit No. 43, which is a document dated April 27, 1923, and purports to be signed by you; the original, not that copy.

(Witness reads document.)

Q. You read that, did you not?

A. I did, Mr. Isseks.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, over objection.

Mr. Haight: May I suggest, in order that the Court properly follow the sequence of events, that you ask Mr. Smith whether this was not written on resumption of negotiations with Owens after they had previously been broken off?

Mr. Isseks: I will accept your statement as true.

Mr. Haight: I should rather have you ask the witness. The date of this letter was April 27, 1923. I understood you to say yesterday that the Owens negotiations broke down in 1922.

The Witness: I think they did, Judge, some time in 1922; but I did not pay much attention to the date of that memorandum.

Mr. Isseks: I do not want to go through the diary.

Mr. Haight: I just wanted His Honor to know this was a resumption after the break-down.

Mr. Isseks: It is the government's position that it was [fol. 1503] part of continuous negotiations. If, as and when the government decides they want to offer this diary—I don't know whether we will or not—Your Honor will see that this gentleman, Mr. Herbert Knox Smith, was very careful to keep a minute record of what took place. It was off again, on again, Finnegan, from the beginning of the early part of 1921 right through until they signed the contract in 1924. There was a break, and they would resume again; there was another break; and they would resume again; but the witness' recollection is the best until we decide whether we want to show this document.

The Witness: What is your question?

Q. What is your best recollection of what happened after that meeting of the Executive Committee and conferences in June, 1922?

A. I don't remember conferences in June, 1922. May I ask what is the date of that memorandum?

Q. It is dated April 27, 1923.

A. That was after the directors' meeting.

Q. Yes, about ten months?

A. Yes, sir.

The Witness: I beg your pardon, Mr. Isseks, I inadvertently did not realize that this was a 1923 memorandum.

Mr. Isseks: All right, sir; but I accept it. Here it is. 1923.

Q. Is it not a fact that in October or in August, 1922, there were again negotiations with Mr. Ashcraft, of Illinois Glass, about working out the deal?

[fol. 1504] A. I don't remember, Mr. Isseks.

Mr. Isseks: Maybe I can refresh your recollection.

Mr. Haight: I did not want to break your sequence.

Mr. Isseks: We might as well get it all. I do not want to be met with the point that there was a complete break of negotiations.

Q. I direct your attention to the August 4, 1922, diary entry of Mr. Knox Smith. See if that does not refresh your recollection that Mr. Ashcraft again got into the picture as an intermediary.

(Witness shown document.)

Q. The question is whether that refreshes your recollection in August, 1922, you were still trying to work out the Owens deal?

A. No. This merely refreshes my recollection to this extent: we met Mr. Ashcraft August 4 on a matter wholly between the Illinois Glass Company and the Hartford-Fairmont Company: the question of price on forming machines: that was the cause for our meeting. During that conference, this refreshes my memory to the extent that we did tell Mr. Ashcraft about this Owens situation having been broken up; but that was not the purpose of the meeting, as I remember.

Q. See if I can help you a little further. I show you a December 22, 1922, entry, made by Mr. Knox Smith; and see if that does not refresh your recollection of your having correspondence with Messrs. Ashcraft and Biggers; or rather, you were reviewing correspondence between Messrs. [fol. 1505] Ashcraft and Biggers, with Mr. Knox Smith and Mr. E. W. Smith?

Mr. Wall: There is a stipulation covering that identical correspondence.

Mr. Isseks: If there is, let us have it. I did not realize that. I think you are right, Mr. Wall. Let us have the documents. Have you got them?

Mr. Wall: I can give you the dates here, I believe, on the stipulation as to the genuineness.

Mr. Isseks: Get the documents. That is a good way.

Q. I will ask the witness, though, if that refreshes your recollection at all, that on December 22nd there was correspondence between Messrs. Ashcraft and Biggers, and in which you, and Mr. Knox Smith, and Mr. E. W. Smith, decided that the whole matter should go over?

A. No, I have no recollection of what those letters were.

Q. Would you mind turning a few pages there and looking at the January 5 entry on the 23rd, Item No. 3: does that refresh your recollection that you discussed with Mr. Knox Smith and Mr. E. W. Smith the answer to a letter that Mr. Ashcraft had sent you?

A. I don't know what the letters were. I think it states I did discuss an Ashcraft letter. I don't know what the letter was.

Q. Look at February 1, 1923, Item 4: does that not refresh your recollection that you talked to Mr. Knox Smith about a letter you were writing to Mr. Ashcraft with regard to the Owens situation?

A. No; but I assume the letter—you have a copy of it—[fol. 1506] refers to the letter I wrote to Mr. Ashcraft.

Mr. Isseks: Judge Haight suggests that the best way is to get the letters.

Mr. Haight: I mean in your regular course.

Mr. Isseks: We will get them.

That brings us up to—just for the record, Your Honor,——

Q. I want to show the witness two items, and see if it refreshes your recollection: March 29, Item 1; see if that refreshes your recollection that you were conferring with Mr. Honiss, Mr. Bartlett, and Mr. Knox Smith, on the Owens situation?

A. On the Owens patent situation.

Q. You notice it says Owens, comma, Hartford-Empire patent situation comma and probable form of the new Owens-Toledo machine?

A. We were conferring with our general patent attorney in regard to the Owens Hartford-Empire patent situation.

Q. Do you not remember early in April,—and I direct your attention to April 9—you were going over with Mr. Knox Smith the digest of his various conferences that he had with the Toledo people?

A. What date was that?

Q. April 9?

A. I don't remember what that conference was.

Q. Then we come to the letter you have already identified, and which has been offered in evidence as Government's Exhibit No. 43, the letter you wrote April 27, 1923. I should like to ask you one question about that letter, as [fol. 1507] long as we are going to have it read. You were writing that, were you not, preliminary to further discussions, the reopening of negotiations with the Owens people, —sort of summarizing the situation?

A. This is an internal memorandum. It is not a letter. It is not even signed by me, although my initials are on it, and I am perfectly willing to state that I wrote it. I was forced to put some of my ideas down in the form of a memorandum. It does not state whom this went to, except up here it is noted "Mr. Honiss". It was an internal memorandum. Why I wrote it that particular time I have no idea.

Q. Look at the items the day before, two days before, and the day after you wrote it, and perhaps that will help your recollection. Look at the item of April 25, Item No. 2.

A. Will this help you? Something obviously had come up in regard to the Owens Hartford patent controversy which prompted me to write this internal memorandum. Just what had arisen at that time, I cannot remember.

Q. Maybe I can help you. Look at entry No. 3, April 25. You notice that. Does it not refresh your recollection that Mr. Knox Smith made a date for you people to reopen negotiations with the Owens people?

A. This is 1923, is it not?

Q. Yes.

A. I don't remember it, but he probably did.

Q. Look at the next item, the next day, and I will ask you [fol. 1508] a general question—I am sorry—I am going to April 27, the second item: does that not refresh your recollection that Mr. Knox Smith went over that very memorandum you have in your hand, Government's Exhibit No. 43, and made various suggestions about it in connection with a proposed Owens deal?

A. No, that does not refresh my recollection.

Q. You notice he refers to the fact he went over that with you in connection with the proposed Owens deal?

A. Yes; but I have no recollection of it.

Mr. Haight: He does not say proposed Owens deal; he says Owens deal.

Mr. Isseks: I am sorry. I take the correction. It does not say proposed Owens deal; it says Owens deal.

Q. Then on the 28th do you not recall you discussed with Mr. Knox Smith an Owens deal?

A. No, but if anything came up at that time, I would be quite apt to.

Q. Was not the memorandum, Government's Exhibit No. 43, written in connection with setting forth your ideas as the executive head of this company? This was now the Hartford-Empire Company, was it not?

A. In 1923, yes.

Q. You were the executive head?

A. I was vice-president.

Q. You were in general charge of the activities of the company?

[fol. 1509] A. Yes, sir.

Q. Do you not recall the purpose of this memorandum was in connection with an Owens deal?

A. No. I am quite willing to admit I would not have written that memorandum unless something had come up in regard to the Owens patent situation.

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[fol. 1510] (At 2 o'clock p. m., Thursday, March 6th, the trial was resumed.)

Mr. Isseks: Your Honor, I have handed the witness a copy of a memorandum of interview with Mr. Ashcraft, dated October 30, 1922, purporting to have been written by Mr. Knox Smith, and it is marked Government's Exhibit 44 for convenience. I understand there is a stipulation that this is a document which is a genuine document coming from the files of Hartford, subject to the qualifications.

Mr. Wall: This is included in the stipulation as to genuineness of documents which has been mentioned. Have you mentioned 45?

Mr. Isseks: I would also like to hand the witness document dated January 5, 1923.

Mr. Middleton: What was Exhibit 44?

Mr. Isseks: 44, the witness referred to, is a memorandum of October 30, 1922, written by Knox Smith, signed that way, of an interview with Mr. Ashcraft. 45 is a document purporting to be from the witness to Mr. Ashcraft dated January 5, 1923, and has on the top of it, "Re Owens Negotiations". I understand both of these documents are included in the stipulation regarding genuineness.

Mr. Wall: That is correct.

Mr. Isseks: So counsel will know, these documents were acquired by counsel for the Government during the recess and were not included in the list furnished to counsel for the defendants as documents to be used in connection with the examination of this witness.

[fol. 1511] Q. Have you read Exhibit 44?

A. I have.

Q. Now, you note that on the photostat, which is Government Exhibit 44—and, Your Honor, this does not appear on Your Honor's copy or the copy furnished to counsel, and counsel can easily come over and look with me at the handwritten notation at the end—whose handwriting was this?

A. This memorandum was received by Mr. Honiss, and I think that is Mr. Honiss' own handwriting.

Mr. Isseks: The witness has said it is a memorandum received by Mr. Honiss. Your Honor, on this photostat—we didn't have time to make an identical copy—there is a stamp similar to the stamps that appear on the other documents.

The Court: The Honiss stamp?

By Mr. Isseks: Yes, the Honiss stamp. Although it might be indicated on the copy, we didn't have time to do it. I wonder if counsel object—I am not offering this notation—I wonder if counsel object to having the notation read so that it will appear it is there? The notation is in writing and says: "Owens matter should not be pushed until Beatty is concluded one way or the other."

Q. Now, my question is whether the memorandum, Government's Exhibit 44, refreshes your recollection that there were conversations in October between the Hartford group and intermediaries for the Owens group continuing the negotiations relating to the Owens matter?

A. What date is that?

[fol. 1512] Q. October 30, 1922.

(Previous question read.)

A. Well, this memorandum—

Mr. Sayles: I am going to object to that question on the ground it calls for a conclusion. I don't mind the facts, but he says "Continuing the negotiations". There may be a contention whether they were broken off.

Mr. Isseks: Does he remember what happened?
The Court: Re-shape the question.
By Mr. Isseks: Certainly.

Q. Mr. Smith, look at that memorandum, and particularly the paragraph numbered 2, and see if that does not refresh your recollection that in October, 1922, the negotiations between your Company and the Owens Company were still going on?

Mr. Sayles: Same objection.
The Court: Objection overruled; he may answer.
Mr. Sayles: Exception.

A. No, this memorandum just refreshes my—it does not even refresh my mind, but I have no doubt that Mr. Smith met Mr. Ashcraft in Washington, as this memorandum so states.

By Mr. Isseks: I will offer the document in evidence, but in view of Your Honor's statement this morning about another document almost identical in its form, written by Knox Smith, referring to an interview he had with somebody else, I am perfectly willing to have the matter deferred.
Mr. Middleton: Objection.
Mr. Emery: Objection.
The Court: Objections may be noted. Proceed.

[fol. 1513] Q. Will you please look at the document marked Government's Exhibit 45 and tell the Court whether you wrote that document?
A. My initials are on it, and my title is there. I must have written this document. I have no reason to deny it.

Mr. Isseks: We offer it in evidence.
Mr. Middleton: Objection.
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have it read.

(Said document read by counsel, being dated January 5, 1923, Government Exhibit 45: "Re Owens Negotiations".)

Mr. Middleton: May we have a separate reason noted for our objection to this exhibit being received although Your Honor has ruled,—and that is, there seems to be a presumption that Mr. Ashcraft may have been acting for Owens at that time, which is not true. There is no evidence and in fact it is not true, and we wish to register our objection to this being received, for the reason there is no connection whatever between Mr. Ashcraft, to whom it is addressed, and Owens. I don't know that the record contains anything at this time as to who Mr. Ashcraft is.

Mr. Isseks: I will ask some questions. I think it has been brought out before.

Mr. Middleton: Nothing in the document which has been offered in evidence, as I understand, which says what Mr. Ashcraft said, but what the witness is saying.

Mr. Isseks: I am perfectly willing to find out who Mr. Ashcraft is.

[fol. 1514] Q. Who was Mr. Ashcraft?

A. He was counsel for the Illinois Glass Company.

Mr. Isseks: On page 78 of the record the question was asked who Mr. Ashcraft was and he answered: "Mr. Ashcraft was general attorney of The Illinois Glass Company".

"Q. Now, The Illinois Glass Company in 1920 was located where?

"A. Alton, Illinois.

"Q. Was he inside counsel or outside counsel?

"A. Outside counsel."

Q. And when you were writing to him, Mr. Smith, what was the purpose of writing to Mr. Ashcraft; what was his position in the matter?

A. I think I explained that the other day. Mr. Ashcraft's company, The Illinois Glass Company, were licensees of the Hartford-Fairmont Company, and a rather large, important, licensee. They were also licensees of the Owens Company, and it was quite natural that Ashcraft was interested in what was going on in the industry, and how his company might be affected. Just as we had the meeting you referred to this morning there were purely routine matters between the Illinois Company and ourselves, which Ashcraft naturally was at. As far as I know he did not represent the Owens Company.

Q. Didn't he tell you he was in touch with Mr. Biggers at that time about their attitude?

A. I don't know whether he told me so, but he unquestionably would want to know from us about what our procedure was going to be. Now what he did with Mr. Biggers, I don't [fol. 1515] know.

Q. Don't you remember he wrote you or told you of his talks with Mr. Biggers during this period?

A. That was in one of the memorandums you submitted.

Q. I want your recollection.

A. I don't remember any details.

Q. Well, I am going to go along for the present. I think for the Government's purpose we have showed who Mr. Ashcraft was. If it becomes necessary to get any additional evidence we will be glad to furnish it. There is some correspondence but I don't want to burden the record with too much correspondence between Ashcraft and the witness.

Q. Mr. Smith, do you recall that after your memorandum of April 27, 1923, which is Government's Exhibit 43, in which you set forth the statement of your position, you did have a conference with representatives of the Owens people?

A. We might possibly; I don't happen to remember.

Q. I will show you a diary entry for May 4, 1923, beginning on the page for April 27th—seven days later—it runs over three pages, and I wonder if you will read it and see if it does not refresh your recollection that you had a conference with Mr. Blair and Mr. Knox Smith at the Ritz-Carlton?

I would like to note that what we have is a copy of what is in there. I have already given you copies.

Mr. Wall: You know it is a copy?

Mr. Isseks: We have made a copy, our girl has gone over it.

The Court: Will you have this identified?

[fols. 1516-1518] Mr. Isseks: With counsel's permission, I would like to have a copy of what I have given the Court, marked, and I would like to use that rather than tear out the pages of the diary. You can correct it if it is wrong in any respect. The pages have been translated into what is now Government's Exhibit 46.

A. I am quite willing to admit that there was a conference on that date.

Q. Does reading the recitation in Mr. Smith's diary of what took place, refresh your recollection as to what occurred at the time?

A. No.

Q. Does it generally set forth what took place at that time between you three gentlemen?

A. That I wouldn't know, but I don't doubt those are the topics we discussed, although I don't remember with any clearness any detail.

Q. But, in general, does it set forth what took place?

A. I cannot tell you. I don't remember the particular comments. I do not deny that these general subjects were discussed.

Mr. Isseks: I offer that in evidence.

Mr. Middleton: I object.

Mr. Isseks: I offer these substitute pages in lieu of the pages from the diary.

Mr. Williams: Excerpts?

Mr. Isseks: This is word-for-word copy. I will take the pages out if you want me to.

* * * * * * *

[fol. 1519] The Court: You may proceed.

Q. Looking at the diary entry—would it be easier to look at a copy rather than looking at the exhibit?

A. I don't mind. Of course I have never seen those diaries, Mr. Isseks, I always assumed they were the private property of Mr. Knox Smith. In fact, I asked the other day the same question why at his death they were not delivered to his widow, and there was no satisfactory answer given.

Q. They were produced by your counsel as coming from the files of the Hartford-Empire Company, were they not?

A. I didn't hear your question.

* * * * * * *

[fol. 1520] Mr. Haight: I can't tell you just where they were. Let me cross-examine.

Did you know there was any such papers in the files of the Hartford-Empire Company, until the TNEC investigation, or subequent to it?

The Witness: No, I considered, when I found out about these diaries, they were Mr. Knox Smith's personal diaries.

Mr. Haight: Did you ever see them?

The Witness: No.

Mr. Haight: Have you ever seen them—except as Mr. Isseks has shown them in the court room today?

The Witness: No.

Q. Is there any question, Mr. Smith, they come from the files of the Hartford-Empire Company?

A. Well, Mr. Isseks, I keep in my office my private files, letters I wrote, private matters. If I should die tomorrow [fol. 1521] I would expect somebody to go to my office and ask for my private papers, which was apparently not what was done.

Q. Don't you know they were turned over to the Government investigators as part of the files of the Hartford-Empire Company in connection with the TNEC hearing?

By Mr. Goodrich: I think that statement is a little erroneous. They were found in the office of the Hartford-Empire Company at Hartford; there is no doubt about that; but that does not mean they were found in the files of the Hartford-Empire Company, nor were a part of the Company's filing system.

Mr. Isseks: How did we get them?

Mr. Goodrich: You found them in the office up there. We let you have them, as Judge Haight said.

Mr. Isseks: They were produced by counsel for Hartford-Empire.

Mr. Williams: We have had nothing to do with the estate of Mr. Herbert Knox Smith.

Mr. Haight: Let's make that perfectly clear. These were found when the investigators for the TNEC came there, and we voluntarily let them go through our files. They remained in our files. We wouldn't take them out of our files in view of the pending proceeding. To that extent they were in our files after the TNEC came.

Mr. Goodrich: I have one further word of explanation, and that is this: Mr. Safford assisted the widow, Mrs. Smith, widow of Herbert Knox Smith, in taking care of his affairs, and doubtless took care of these papers along [fol. 1522] with other papers and doubtless she didn't want them.

Mr. Isseks: I didn't expect to go into that. I will show they were used by the Hartford Company for business reasons, if we are going to go into it.

The Court: You may proceed, if you want to try to show that.

Mr. Isseks: I certainly will, as long as they want us to show it.

I now mark a document that has 25 pages which comes from the files of the Hartford Company, and has all of these excerpts we have been talking about, and were prepared by Hartford, that is, before the TNEC investigation.

Mr. Haight: Well, don't testify.

Mr. Isseks: You will find out, I guarantee to prove that before we get through. You have a copy of that.

Mr. Haight: I don't know what it is.

Mr. Isseks: You have been using it. You have a copy right in front of you.

Mr. Wall: We have nothing, I am sure, that you haven't taken.

Mr. Isseks: That is true, too.

Q. I show you Government Exhibit 47, for convenience, which purports to be dated June 17, 1931, and which reads on the top, "Excerpts from Diary of Herbert Knox Smith of matters relating to Owens, Hartford, Hartford-Fairmont, Hartford-Empire relations, December, 1921,—May, 1924."

The stipulation that Hartford has signed states it was found in the files of Hartford.

[fol. 1523] Mr. Haight: That is what you were talking about from Exhibit 47?

Mr. Isseks: That is what I am talking about. This document was found in the files of Hartford.

Mr. Haight: He doesn't know anything about it.

Q. I show you an entry on May 4, in the document which it is stipulated comes from your files, government's exhibit 47, and ask you whether that does not refresh your recollection? It is identical with the other entry prepared, according to counsel—I don't know who it was prepared by.

Mr. Haight: I want to find out the fact and stipulate it.

Mr. Isseks: My associates say it was prepared by secretary of the corporation, Mr. Safford. They may be wrong. Counsel said it was Herbert Knox Smith.

Mr. Wall: I don't think that is possible.

Q. I ask Mr. Smith whether that refreshes his recollection as to the conference he had on May 4th, I believe is the date,—1923.

Mr. Haight: Now we have the whole story but if you want to put Mr. Safford on.

Mr. Isseks: I will take his stipulation.

Mr. Goodrich: My understanding is the memorandum you are speaking of, marked Exhibit 47, was prepared by Mr. Safford under the instructions of Mr. Herbert Knox Smith, who was then alive, of course, as personal preparation for Mr. Smith, who expected to be called as a witness in a suit between the Owens Estate and the Owens Company, and [fol. 1524] that Mr. Smith, in preparing himself for the testimony he expected to give, asked Mr. Safford, who was his junior and his assistant, to prepare from his diaries this compilation. That is the explanation of the existence of this.

Mr. Isseks: Counsel for Hartford has stipulated this document, 47, comes from the files of Hartford. Of course, I don't mean to concede in any way that the document which I have in my hand, namely the actual diary, had not come from the files. I want to move along.

Q. I want to ask the witness to look at Exhibit 47, which is admitted by stipulation comes from the files, and to ask you whether looking at that does not refresh your recollection that you attended a conference of Mr. Blair and Mr. Knox Smith at the Ritz-Carlton on May 4, 1923?

Mr. Goodrich: You say it comes from Exhibit 47?

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The Court: I thought he answered that.

The Witness: I think I said I didn't remember but I would [fol. 1525] admit I was at the conference.

Q. Would you look at the Exhibit 47? I am going to see if I can refresh your recollection. Look at the entry. Do you remember that the topics referred to in the entry were discussed by you three gentlemen?

A. I have no detailed recollection.

Q. Do you have any general recollection?

A. No, but I would not deny that there were discussions.

Q. Do you have any general recollection of the subject-matter that was discussed?

A. No.

Q. Does not the reading of the entry reflect now in your memory what transpired at the meeting?

A. I have no memory of what transpired at that meeting.

Q. You remember the meeting?

A. I am perfectly willing to admit quite frankly I was at that meeting, but as to what took place and how, I have no memory. That was many years ago.

Q. Do you remember the discussion—that there was a discussion at the meeting?

A. No, I don't remember the discussion at the meeting.

Q. I mean not the details of the discussion, but do you remember there was a discussion?

A. No, I don't remember any of the details of the meeting, or what was said at the meeting, but I would not deny that these subjects were discussed.

Mr. Wall: You would not deny they were discussed?

The Witness: That they were discussed.

[fol. 1526] Q. You and Mr. Knox Smith went over there in your capacities as executives, you the vice-president?

A. Correct.

Q. He was the secretary of your Company?

A. Correct.

Q. You went over there for the purpose of discussing with Mr. Blair matters relating to the arrangement between your two companies?

A. Not that I remember.

Q. You said you remembered that you went to a meeting over there?

A. I admit I was at the meeting.

Q. What was the purpose of the meeting?

A. That I don't remember.

Q. Wasn't it in connection with negotiations?

A. That I don't remember, but I would not deny it.

Q. Let me ask you a broader question: Do you remember your testimony that you did discuss the matter with Mr. Blair at one time in 1923?

A. What is the date?

Q. May 4, 1923—which was after your memorandum of April 27?

A. I think it is quite evident we did.

Q. Mr. Blair was there, of course, as vice-president,—I believe in addition to that he was an officer of Owens—general manager?

A. I have forgotten.

Q. But he was an executive?

A. Yes.

Q. This was all preliminary to the final deal you made, [fol. 1527] consummated in the contract of April 9, 1924?

A. I don't recollect as it was preliminary. It came before the confirmation, this meeting, yes, of course.

* * * * * * *

[fol. 1528] Q. Do you remember that during this period you were negotiating with Owens you were also trying to make some sort of arrangement with Tucker, Reeves and Beatty? I am handing you a document to refresh your recollection.

The Court: Which one is this?

Mr. Isseks: This is 46.

A. I will have to look this over.

[fol. 1529] Q. Just look at the item marked "A" and see if that refreshes your recollection.

A. I could not tell whether we were conferring with Mr. Beatty at that time.

Q. Does not the item refresh your recollection it was pointed out at the meeting by either you or Mr. Knox Smith with Mr. Blair, that it was necessary for him to have some arrangement with Tucker, Reeves and Beatty if you were to have stabilization?

A. I don't remember that meeting.

Q. I would like to show the witness, and have him look at, 47, since there has been some question raised about the diary itself, to make the Government's position clear—look at the entry on Government Exhibit 47, which is marked May 10, 1923. I have an excerpt of the entry if you would like to look at it.

A. May 14th?

Q. May 10th, entry on page 14 of the exhibit. Have you read the entry?

A. I have.

Q. Does that refresh your recollection you attended a meeting with Mr. Knox Smith and Messrs. Owens, Blair and Biggers at the Ritz-Carlton on May 10, 1923?

A. I do not deny I was at that meeting.

Q. Do you remember a meeting in the spring of 1923 in which Mr. Owens and Mr. Blair and Mr. Biggers were present?

A. I don't happen to remember the meeting but I have no doubt such a meeting did take place.

[fols. 1530-1532] Q. Does the excerpt from the diary——

A. It does not help me.

Q. Does not help at all?

A. Not as to any of the details of the meeting.

Q. Were the topics set forth therein discussed at the meeting?

A. I have no reason to deny that they were, or no reason to say that they were not.

Q. Do you remember attending a meeting in the spring of 1923 in the Ritz-Carlton Hotel?

A. I did go to the Ritz-Carlton Hotel in New York with these gentlemen. I couldn't tell you when, and this doesn't help me fix the date.

Mr. Isseks: I offer that portion of Exhibit 47. I wish to make the record clear: all I offered before in Exhibit 47 was the portion on page 13 referring to the May 4th entry. Similarly I now offer from Exhibit 47 that portion of the entry at page 14 that refers to a meeting on May 10th. Your Honor has an excerpt from it.

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[fol. 1533] By Mr. Isseks: I assume Your Honor will make the same ruling and give us an opportunity to submit memoradum.

The Court: Same ruling.

Mr. Goodrich: May I interpose—what was the last thing you tossed over the clerk's desk?

Mr. Isseks: Exhibit 48. 48 is a copy made by the Government of the diary entry for May 10, 1923, relating to the Owens matter, and is by stipulation substituted for the entry itself, and is subject to correction, anybody can correct it.

Mr. Goodrich: All right.

Q. Now, Mr. Smith, I hand you a document which is marked Government Exhibit 49, and purports to be a letter dated May 14, 1923, from yourself to Mr. Dorsey, and I ask you whether you wrote that document?

[fol. 1534] 3:00 O'clock P. M.

A. I wrote that, Mr. Isseks.

Mr. Isseks: I offer it in evidence.

Mr. Haight: If Your Honor please, we will not object to the offer of this letter and I presume the reply that Mr. Isseks will offer in a moment if it is understood by the government that by doing so we do not waive our right to object to any other communications between counsel and the president of the Hartford-Empire Company as privileged communications. There seems to be some doubt as to when you do waive it, and if the government will agree that we will not waive it.

Mr. Emery: We object.

Mr. Isseks: I concede you do not waive but I want the government's position clearly understood. We take the position there is no privilege. However, we will agree that their silence does not constitute a waiver.

The Court: It may be admitted over objection.

(Reading Exhibit 49.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 50 a letter dated June 25, 1923, from Mr. Dorsey to Mr. Knox Smith, which has a stamp thereon, "Received June 29th, 1933, Mr. Honiss". Your Honor, I understand there is a stipulation there as to genuineness or as to coming from the file by Hartford.

Mr. Wall: As to this letter you mean?

[fol. 1535] **Mr. Isseks:** Yes.

Mr. Wall: Dorsey to H. K. Smith?

Mr. Isseks: That is right.

Mr. Wall: That is admitted to be genuine, of course, with the right to object on other grounds.

Mr. Isseks: Without asking the witness any questions I would like to offer the document in evidence.

Mr. Emery: That is objected to.

Mr. Haight: It will be understood, Mr. Isseks, without taking time to interrupt on any of these things we do not waive, by silence, any question of privileged communications?

Mr. Isseks: That is right, as long as you understand we take the position there isn't any privileged communication.

The Court: What position did Mr. H. K. Smith occupy with Hartford-Empire at that time?

Mr. Isseks: Secretary. I will ask the witness.

Q. In 1923 Mr. Smith was secretary, wasn't he?
A. Yes. I am not so sure.
Q. He was also general counsel at that time, wasn't he?
A. Yes.

The Court: The offering 50 will be admitted over objection.
Mr. Isseks: Thank you. I would like to have it read.

(Reading Exhibit 50.)

Mr. Isseks: Mr. Smith, you heard my associate read [fol. 1536] that letter?

A. I did.
Q. You will notice that he said, the writer of the letter, Mr. Dorsey, states in paragraph 11, "I explained the deal on Friday evening to F. G. Smith before he sailed". Does that refresh your recollection that he did?
A. No, sir. I have even forgotten that I sailed.
Q. My question is not whether you sailed. The question is whether it refreshes your recollection that he told you about it after he saw Mr. Belknap?
A. No, but I don't deny that he did.

The Court: We will suspend for fifteen minutes at this point.

(Recess fifteen minutes.)

Q. You have looked, have you not, Mr. Smith, at Exhibit 50?
A. I just looked at it.
Q. Have you looked at the handwriting on pages 2, 3, and 4?
A. Yes, sir.
Q. Whose handwriting does it look like?
A. It looks like Mr. Honiss' handwriting.

Mr. Isseks: Your Honor, in the last paragraph of Exhibit 50 reference to a copy being sent to Mr. Falck, counsel for Mr. Falck have indicated he will ascertain whether or not he did receive a copy and advise the Court.
The Court: Very well.

Q. I now hand the witness Exhibit 51, which is a letter dated August 8, 1923, from Mr. Dorsey to the witness, and I ask you, Mr. Smith, whether you received that document [fol. 1537] from Mr. Dorsey in the regular course of business?

Mr. Isseks: I believe there is a stipulation?
Mr. Wall: As to genuineness.
Mr. Isseks: Thank you very much.

A. I have no reason to doubt that I got it.
Q. You notice Mr. Belknap is referred to in that document?
A. Yes.
Q. And the previous document?
A. Yes, sir.
Q. Mr. C. B. Belknap, of the Owens people?
A. He is now. I think at that time he was their attorney.
Q. You want to distinguish him from another gentleman who is his brother?
A. Yes.
Q. His name is —— ——?
A. W. J.

Mr. Middleton: May we have a moment's time, if Your Honor please, we had no notice of what was to be put in today and it is quite a task to follow.

Mr. Isseks: Your Honor, I thought we had an arrangement with counsel for Hartford——

Mr. Wall: Yes, the difficulty is that you could not perhaps tell which papers were to go in and we photostated a lot of them and distributed them that way. They probably have more than you are using.

Mr. Isseks: We have given counsel a list of documents and they have made photostats and there is a little con-[fol. 1538] fusion as to which ones are going in today.

Mr. Middleton: We wish our objections to be lodged to this, and I should have stated in connection with the preceding exhibit we wish especially to object to a document which is drawn by Mr. Dorsey who has no connection whatever with Owens and never did have, purporting to quote someone's views with respect to an Owens attitude, purely conclusions of Mr. Dorsey. So I take it this is his own statements that are conclusions as to what the attitude of some representative of Owens might have meant. At that time Mr. Belknap was not an officer of Owens. For several reasons there is a special objection to both of these exhibits on behalf of Owens.

The Court: Mr. Dorsey, I take it, was a patent consultant of the——

Mr. Isseks: Hartford Company at this time.

The Court: Yes.

Mr. Isseks: Still he is alleged in the bill of particulars to be a co-conspirator.

Mr. Wall: He is a member of the bar.

Mr. Middleton: He is not a defendant in this case.

Mr. Isseks: No. He was not a director of the company at the time of the filing of the complaint, but he is alleged in the bill of particulars to be a co-conspirator.

The Court: The Court has gone on the theory any letters, written communications made by a co-conspirator one to the other are admissible in proving the maintenance of a [fol. 1539] conspiracy or the intent that leads to a conspiracy. On that theory the documents have been admitted. I see no difference in those from some of the other letters that have been presented.

Mr. Middleton: Our position, so far as Owens is concerned, we certainly believe there is no conspiracy shown as far as Owens is concerned up to date.

The Court: Well, assuming that to be correct, the acts as evidenced by writings in this case by some co-conspirator may be admitted by the Court for the purpose mentioned even though they may have no connection with the established conspiracy in arriving at a conspiracy. The Court sees no reason why this should not be received the same as the other letter.

Mr. Williams: On former occasions the argument was based on a declaration made by a partner, one partner charged with being a conspirator. That statement was made by Goodwin Smith to some other party. Here we have in this case Dorsey, who is not a party. He is not charged with conspiracy.

Mr. Isseks: He is.

The Court: Counsel said he is.

Mr. Isseks: He is alleged to be a co-conspirator. In the bill of particulars, which was requested by the Corning people, they asked in paragraph 1-B who the names of the other conspirators were. We listed them as follows: J. D. Dilworth, F. Goodwin Smith, Arthur L. Day, Beech-Nut Packing Company, Monongah Glass Company, Herbert [fol. 1540] Knox Smith, Arthur A. Houghton, H. L.

Heintzelman, R. T. Cunningham, William A. Lorenz, Edward H. Lorenz, Ernest Walker Smith, Reginald Halliday, H. D. Gibson, Thomas W. Russell, Joseph Morritt, James W. Green, Vernon M. Dorsey, William Sinclaire and C. E. Githler. He is alleged to be a co-conspirator. There are other grounds which I do not want to argue at this time.

The Court: The Court will admit it.

Mr. Isseks: And that bill of particulars was furnished counsel in the case. I would like to have the exhibit read.

(Reading Exhibit 51.)

Q. Now, Mr. Smith, the handwriting on the first page, I don't know whether you can decipher it on the photostat, under the word "net" somebody wrote the word "gross", and a question mark. Is that your handwriting?

A. No.

Q. Can you identify it?

A. It looks like Mr. Honiss'.

// Q. I show you Exhibit 52, a letter dated January 21, 1924, from Mr. Dorsey to yourself. I will ask you whether you received that in the regular course of your business? There is a stipulation on that as to genuineness, Your Honor.

A. Do you wish me to read it?

Q. Please, unless you can by looking at it say that it came to you in the regular course of business. Then you don't [fols. 1541-1544] need to read it.

A. I am willing to say that.

Mr. Isseks: I offer it in evidence. It is like the other documents, except a different date.

The Court: It may be admitted over objection.

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[fol. 1545] (4:00 o'clock.)

Mr. Isseks: Your Honor, at this time, for the record, I should like to have marked as the next exhibit an excerpt from Mr. Herbert K. Smith's entry for February 19, 1924, relating to the Owens matter. It is marked 53. It is also on Page 21, Exhibit 47. I should like to hand the witness Exhibit 53, which is a copy right from the diary entry, and ask him from reading that excerpt from the diary whether it refreshes his recollection that he attended the conference at the Belmont Hotel, New York, with Messrs. Ashcraft, Knox Smith, and Mr. Knox Smith's brother, E. W. Smith, on the Owens matter.

Mr. Williams: From what page of Exhibit No. 47 was this copy made?

Mr. Isseks: I am sorry: 21.

Q. Do you remember attending the conference?

A. No; but I have no reason to deny it, Mr. Isseks.

Q. Does the excerpt from the diary refresh your recollection as to what took place at the conference?

A. No, I don't think so.

Q. It does not even give you any recollection of any kind?

A. No sir.

Mr. Isseks: Your Honor, in view of Your Honor's previous ruling, I should like to—I assume Your Honor will sustain an objection—and I should like to be given an opportunity to submit a memorandum in connection with it.

[fol. 1546] The Court: Very well.

Q. Mr. Smith, I would like to see if I can refresh your recollection. Do you not remember there was a controversy in the early part of 1924 as to the amount of royalty income you could reserve before the Owens people would share in the royalties over and above that amount?

A. I think that was a continual controversy.

Q. Do you remember it was not decided until near the very end?

A. I do not happen to remember that; but it might probably be so.

Q. Do you remember Mr. Ashcraft coming to you and saying that your insistence on reserving $650,000 was too high, and suggested that it only be one half a million dollars?

A. No, I don't remember that.

Q. You do not remember talking to Mr. Ashcraft about that matter at all?

A. No sir.

Q. You would not say it did not take place?

A. No sir.

Q. Do you not remember one of the points you made was that you would have to be able to have enough of the royalty income to do business, namely, to develop machines, pay fixed charges, and have some return to your stockholders?

A. I think that was always my contention. I cannot place that down to that particular meeting.

Q. You said that was always your contention. You said you did remember talking to Mr. Ashcraft at the Belmont? [fol. 1547] A. No, I said I admit I was at that meeting; but I don't remember what took place at that meeting.

Q. Remember mentioning that fact or those facts to Mr. Ashcraft?

A. No, but I do not deny it.

Q. Do you remember saying unless you could live under this royalty reserve to you——

A. I don't remember saying that; but I do know that was one of the principal things——

Q. Do you not remember saying unless you could live, you would fight?

A. No; but I assume that would be true; we fought many times.

Q. Do you not remember you said if you could not get the feeder patented, you would be forced to go out in the open market with a free feeder and sell licenses to as many people as you wanted?

A. No sir.

Q. You do not deny you said that?

A. No, I just don't remember.

Q. I hand you a memorandum which is marked Government's Exhibit No. 54, which purports to be and it is entitled, "Memorandum in re Owens Agreement," March 18 and 19, 1924, and purports to be signed by Mr. Knox Smith, and has the number on the bottom: 2029-2032.

The Court: Did you want the witness to read 54?

Mr. Isseks: Yes, the question was to read it. He is reading it now. He is reading a typewritten copy in lieu of the [fol. 1548] photostat which is very difficult to read.

Q. You have read it, have you not?

A. I have.

Q. Does it refresh your recollection and you and Mr. Knox Smith attended a conference shortly prior to the final execution of the contract with Messrs. Blair and Belknap, at which the deal was finally made?

A. I was at such conference.

Q. You were?

A. I was.

Q. After reading the document, does it refresh your recollection that what is set forth therein correctly sets forth what transpired at the conference?

A. Some of it does. I remember Mr. Blair put forth some formulae which I, at the time they were put forward, did not quite understand. I remember that part of it. I remember there was a general discussion about figures and what was to be reserved.

Q. Does it generally set forth what took place?

A. I cannot remember all; but I would not be in any position to doubt but what the memorandum gave a general picture of what took place?

Mr. Isseks: I offer it in evidence.

Mr. Emery: Objection.

Witness: I think it only fair to say, Mr. Isseks, that this meeting was in early 1924; and what did take place there, that this was after other attempts to get together had [fols. 1549-1552] failed; and the Owens Company had actually brought suit under the Lott and Brookfield patents against one of our licensees, which was some time—I cannot give you the date—it is a matter of record—it was around the the middle of 1923; and that that quite altered the situation from our standpoint.

Q. I believe you said, though, that it gave a picture of what took place?

A. I would think so, a general picture.

Mr. Isseks: I offer it in evidence.

Mr. Emery: Objection.

The Court: It may be admitted, over objection.

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[fol. 1553] Mr. Isseks: Your Honor, at this time I would like to have marked the General License Agreement between The Owens Bottle Company, Hartford-Empire Company, Hartford-Fairmont Company, The Graham Company, the Charles Boldt Glass Company, and The American Bottle Company, which purports to be dated April 9, 1924, marked as Government Exhibit 55.

Q. Mr. Smith, I show you page 26 of this agreement and ask you whether your signature is there as the president of Hartford-Empire Company and Hartford-Fairmont Company.

A. It is.

Q. Then the signature of the secretary of both companies is that of Mr. Herbert Knox Smith?

A. That is right.

Q. This is the agreement, is it not, between the parties, namely, Hartford on the one hand and Owens and its group on the other?

A. For 1924.

Mr. Isseks: I offer it in evidence.

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[fols. 1554-1556] The Court: Very well, the document, Exhibit 55, will be admitted over objection.

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[fol. 1557] Q. I would like to show you, Mr. Smith, a memorandum, document which purports to be a memorandum, of an interview between you and George E. Howard on April 5, 1922, in New York City. The document comes from the files of Corning Glass Works and is stipulated to be genuine. It is a blueprint. It is rather difficult to read, and with the permission of counsel I would like to substitute a copy we have made.

Mr. Middleton: Who makes the memorandum?

Mr. Isseks: Memorandum by the witness of a conference had with Mr. Howard in New York City on April 5, 1922. It is stipulated by Corning as a genuine document, Item 188.

Q. I hand you Exhibit 56, and ask you to read it. (Witness reads same.) Did you write that document, Mr. Smith?

A. Yes, I wrote the document. The note says it was dictated but written after I had left the office.

Q. Do you remember the conference, sir?

A. I don't remember the particular conference. I don't deny there was such a conference.

Q. Do you remember who Mr. Howard was?

A. Oh, yes.

Q. Will you please tell us who he was?

A. Mr. Howard was an engineer in the glass industry and he had developed a feeder. That feeder we were sure infringed our rights. We were also in interference with him, and Mr. Howard admitted that we had the dominating claims as far as gob feed was concerned, but he was sure [fol. 1558] that he might obtain some claims on some of the details of an automatic gob feeder, and that if he did we could prevent him from using his feeder, and in his own judgment he could prevent us from using our feeder, and therefore there would be a deadlock, and he was quite anxious to make some arrangement with us.

Q. Did Mr. Howard have any feeders out on the market?

A. At this time?

Q. Yes.

A. Oh, yes.

Q. A good many?

A. I cannot remember at this date just how many.

Q. At any rate did he have any out?

A. Oh, yes.

Q. Many?

A. This is just a guess—the record will show.

Q. Your best recollection?

A. Around forty.

Q. To various manufacturers of glassware?

A. Correct.

Q. How many, approximately?

A. That I cannot remember.

Q. More than a dozen?

A. I wouldn't know.

Q. More than five?

A. I would just be guessing.

Q. I will take your guess.

A. It may not be true,—the records will show just how many.

[fol. 1559] Q. I am trying to get your recollection of it. What is your best recollection as to how many manufacturers of glassware Howard had distributed to in some manner to make machinery?

A. At this particular time?

Q. Yes sir, '22.

A. A pure guess, five or six.

Q. Do you remember the names of any?

A. The Berney-Bond Glass Company, Glenshaw Glass Company, Hygeia Glass Company,——

Q. Anybody else?

A. Well, I think there were one or two.

Q. At that time, in 1922, your company didn't have any patents issued to your inventors on automatic machinery, did it?

A. No; we were in a continual fight in the Patent Office, and everybody clawing at it, everybody wanting a piece of the cake.

Q. You were clawing at everybody else too?

A. No, we were protecting our rights, and if we thought a feeder or mechanism infringed our rights we certainly would take due course of action.

Q. You didn't know which one was going to win out at that time, did you?

A. We had a belief that we would. Of course we didn't know until those final decisions are made, but we had been the first to create and develop this new art.

Q. Other people claimed they were the first?

A. Correct.

[fol. 1560] Q. Both sides, various groups, claimed they were first?

A. That is quite true.

Q. That is what the fight was about?

A. Oh, yes, no question about it.

Q. Did Howard put out a commercial feeder, and by that I mean did he put it out on the market before you people, or after?

A. We were the first to put the gob feeder on the market. Now, we started off with the paddle feeder in 1915, collected our first royalties at the end of '17. Then we put out what we called the paddle-needle feeder, then later on we put out what we called our Hartford single feeder.

Q. When did Mr. Howard commercially put out his feeder?

A. I cannot tell you.

Q. In relationship to yours?

A. Which feeder are you talking about?

Q. Take any one,—the first feeder.

A. When did Mr. Howard put out his first feeder?

Q. Yes.

A. I cannot tell you.

Q. It was prior to April 5, 1922?

A. Oh, yes.

Q. You have already testified you wrote that document?

A. Yes.

Mr. Isseks: I would like to offer it in evidence.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have my associate read it.

[fol. 1561] (Thereupon Mr. Kramer read said Government's Exhibit 56.)

Q. Mr. Smith, there are some Howard feeders being used today, are there not, as far as you know?

A. Yes, I think the Hygeia Glass Company still operates Howard feeders.

Q. Don't you remember, Mr. Smith, one of your problems back in 1922, when you were having this patent interference fight, was that your patents had not been allowed, your applications, and Howard's had not been allowed—had they—and there were others, too?

A. Yes.

Q. Who were they?

A. Tucker, Reeves——

Q. And Beatty?

A. Beatty and Owens on that plug feeder.

Q. Miller?

A. Miller.

Q. There were others besides?

A. I only remember four major ones.

Q. Don't you remember your problem with Howard was he was running a going business of distributing in some form, feeders, in competition with yours?

A. No, our main problem with Howard was he was running and licensing what we were sure was an infringing feeder, and we didn't like it and were going to take steps as soon as we could to stop it.

Q. Don't you remember your problem was—I am repeat- [fol. 1562] ing, I am sorry, but I have to—that Howard had a going business and a feeder which could compete with yours?

A. Well, Howard had a going business and was licensing his feeder.

Mr. Isseks: Your Honor, at this time I would like to have marked as Exhibit 57, a letter dated April 12, 1922, from Mr. Dorsey to the witness. This has been stipulated as to genuineness by the Hartford-Empire Company.

Q. Mr. Smith, I ask you to read it and tell us whether you received that from Mr. Dorsey in the regular course of business.

A. (After examining same.) I don't remember it, but I don't deny I did.

Mr. Isseks: It is stipulated as genuine. I offer it in evidence.

Mr. Middleton: Same objection.

Mr. Haight: I am looking at the reservation we made yesterday in respect to privilege. It seems to be confined to that one letter. If it can be understood it applies to all other letters to which we do not interpose objection of privilege, then we have no objection to this.

Mr. Isseks: I thought the statement went to all documents, with the understanding the Government doesn't concede there is a privilege.

Mr. Haight: I want to clear that up, first. It is entirely understood when we do not object to a letter between counsel and client we are not waiving any right we have later to object to other documents between the same counsel [fol. 1563] and client, as to privilege.

The Court: If you have some specific point in mind later where you expect to raise the question.

Mr. Haight: I don't know what they expect to prove. There may be some question. Now, Mr. Wall raises the question that the reservation we made was not assented to by other counsel than the Government. I feel I ought to have an assent by other counsel.

Mr. Isseks: Of course, the other counsel cannot object on the ground it is privileged. The only one who can object, if they can object at all, is Hartford. We claim there is no privilege.

Mr. Haight: It is a question of waiver.

Mr. Isseks: They cannot have anything to say with the waiver. The only person who can waive, if they waive at all, is Hartford. Their objection goes, I suppose, to the admissibility against them.

Mr. Haight: Cannot we make it clear what we are asking for is the same thing you very courteously gave us yesterday?

Mr. Isseks: I am sorry. I misunderstood.

Mr. Sayles: Corning will grant you the same privilege.

Mr. Middleton: And Owens will grant the privilege. We don't object.

Mr. Emery: We don't object.

Mr. Fess: We don't object.

The Court: It will be admitted over objection.

[fol. 1564] Mr. Fess: Of course, with the understanding, the general understanding at the outset of the trial, that all objection as to incompetency will be reserved by other defendants.

The Court: I am receiving each of these exhibits over objection.

(Government Exhibit 57 read.)

Q. Don't you remember, Mr. Smith, that one of your problems with Howard was that he presented a very serious competition, commercially?

A. Well, there wasn't any question. First of all, we looked upon him as a pirate, that he was using our rights. Now, until our own patents issued, the more of these pirate feeders that went into the market and were used, deprived us of our own market and our licensees were very insistent about our bringing our patents out as rapidly as we could, because they took the attitude that, Why should they pay us royalties when all these pirate feeders were running free?—and that was a natural attitude. In fact, they were at my heels continually, "Where are your patents?" "Where are your patents?" They said that many times more than you have said to me, "Can you remember?"

Q. All right. Now you decided the way to get the patent was to buy up the people you could who were competing commercially?

A. If I could settle interferences, perfectly legal to settle those interferences to prevent long expensive litigation when that was our main aim, to get our own patents out. We [fol. 1565] developed this art, we created it.

Q. That is what you say?

A. Well, the truth is we know we did.

Q. Howard said he did, didn't he?

A. Howard said he had made a contribution to it. He recognized we had developed the art. He said he thought unquestionably we would come out with the dominating claims, but he had claims in there which he thought covered refinements, and that he could have stopped us.

Q. I am going to ask you the question again: don't you remember Howard presented a very serious competitor commercially?

A. Well, there was no question if he was free to run around infringing our rights, of course he was a competitor.

Q. And commercially?

A. Yes.

Q. Don't you remember also that one thing that worried you in 1922, while you were negotiating with Owens, was that Howard might sell to Owens, which would be in your mind distinctly disastrous?

A. Yes, there was that situation: Owens wanted to buy Howard to use against us.

Q. And you wanted to buy Howard to use against them?

A. Yes.

Q. Don't you remember you told your executive committee that probably the worst thing that might happen would be for Howard to sell out to the Owens people?

A. I don't remember it. I might have said it to Mr. Smith.

[fols. 1566-1567] Q. Don't you remember also the thing that worried you very much because you were then making a deal with our friend—with your friend, rather, at Corning; remember that?

A. Excuse me?

Q. I will repeat the question. Don't you remember another thing that worried you about Howard was Howard was threatening to go into the field of bulb and pressed ware, which would affect your relationship with Corning?

A. I don't remember that, but if he was——

Q. Of course what you told your Board at that time was true?

A. Yes. You may prove it to be true by a document, but I don't happen to remember.

Q. I cannot hide these things (indicating document in hand). I now offer in evidence executive committee meeting minutes of June 23, 1922, which have been stipulated as genuine, I believe, or from the files, one or the other. We have the copy of original minutes in the court room, and they can be corrected. The minutes show that Messrs. Arkell, Goodwin Smith, Cunningham, Peiler, Honiss, Ernest Smith and Knox Smith were present. The meeting took place at the Hotel Belmont. Apparently the minutes were prepared by Mr. Knox Smith, secretary of the company, and they relate to the Howard matter, Owens matter, and Federal matter, and Hartford-Empire, too. I am offering the entire minutes at this time, but will only have read, after they are admitted—if they are admitted—the part relating to the Howard matter.

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[fol. 1568] Q. Did you finish the Howard one?

A. Yes.

Q. Does that refresh your recollection as to what took place at the minutes of the executive committee of Hartford-Fairmont Company on June 23, 1922?

A. I would not remember all the details. I don't deny that this whole matter was discussed in some such fashion, and if it is a copy of the minutes of our executive committee I think it probably is.

Mr. Isseks: I will offer it in evidence. (Exhibit 58.)

The Court: It will be admitted, over objection.

The Witness: Mr. Isseks, is that all going in, or just the Howard?

Mr. Isseks: I am going to offer the entire minutes.

The Witness: I haven't read the rest.

Mr. Isseks: I will come back to that later on.

[fol. 1569] Mr. Wall: May the offer be withheld until it is done? The witness wants to read the rest of it.

The Witness: I am not anxious to.

Mr. Isseks: I am perfectly willing to let him read it.

The Witness: I want to save time. I was wondering what I was supposed to admit.

Mr. Isseks: If this is the minutes, there is no doubt it goes in.

Mr. Wall: It says "memo" at the top.

The Court: You haven't agreed it is the minutes?

Mr. Isseks: All I ask is the offer relating to Howard. I will offer at this time just the Howard part.

The Court: Very well; that may be admitted.

Mr. Isseks: If the minutes are an accurate copy I will renew my offer as to the entire matter. Mr. Kramer will read the part relating to Howard.)

(Thereupon Mr. Kramer read such part from Government's Exhibit 58.)

Q. Do you remember, Mr. Smith, you finally made a deal with Mr. Howard?

A. I do.

Q. And in substance, did you buy him out?

A. I don't know what you call "buying him out."

Q. Do you remember you paid him in stock; didn't you?

A. We paid in preferred stock of the Hartford-Empire Company, and some cash, I think it was $50,000.00.

Q. I am sorry?

[fols. 1570-1571] A. I think it was $50,000.00 in cash.

Q. How much was the stock?

A. At par, worth $450,000.00.

Q. So the total amount you paid him was half a million dollars?

A. Correct.

Q. Do you remember at the time you made the deal Mr. Dorsey was in Europe?

A. I would not remember that.

Q. I will refresh your recollection in a minute. Do you remember you were anxious to get Howard out of the way?

A. I don't know what you call "out of the way".

Q. Out of the United States of America.

A. Howard?

Q. Yes sir.

A. No sir.

Q. Did you send him over to Europe?

A. I don't think we sent him to Europe.

Q. It is all right, I will try to refresh your recollection. I may be wrong. I will have a letter dated July 29, 1922, from the witness to Dorsey in London, England, marked as the next exhibit. There are two letters of the same date. The one letter I have marked first is the one that begins: "Dear Mr. Dorsey: 198 shares out of 200 have signed." That will be Exhibit 59.

There is another letter to Mr. Dorsey the same date, which is going to be the next exhibit. (Exhibit 60.)

* * * * * * *

[fol. 1572] Q. Mr. Smith, have you read Exhibits 59 and 60?

A. I have.

Q. You wrote those two letters, did you not?

A. I did.

Mr. Emery: They are objected to.

The Court: They may be admitted over objection.

(Reading Exhibit 59.)
(Reading Exhibit 60.)

Q. Now, Mr. Howard has been in your employ ever since, hasn't he?

A. He has.

Q. He is in your employ now?

A. Yes.

Q. Why was it advisable to have Howard away when the deal becomes known to his licensees?

A. All of that is not as sinister as it sounds.

Q. I did not write it. I am asking you.

A. I can tell you why. In the first place we had not signed the deal with the Empire Company. We had come to an agreement but the contracts with the Empire Company had not been signed. We did not wish that known until the papers were signed and we were ready to make the announcement. Mr. Falck was abroad, and I think the papers —it was October before they were signed.

Q. What has that got to do?

A. Because Howard was being paid in stock of Hartford-Empire Company and I thought Mr. Howard, not intentionally but probably would talk about that negotiation. [fol. 1573] That was one reason. The second reason was we made up our minds we would not announce this Howard negotiation until the Hartford-Empire Company had been announced, the formation of that company, and when that was announced and the Howard negotiations were announced I knew the first thing that would happen the Howard licensees would jump on to Howard and I wanted to tell them what the situation was in my language rather than Mr. Howard's language.

Q. And that is why you said it is absolutely necessary that he must not talk too freely and that information does not reach the States prematurely that your company owns the Howard assets?

A. Yes.

Q. Didn't you have in mind when you first got a chance to talk to these Howard licensees that they were to pay high royalty rates?

A. No.

Q. And they finally did have to pay high royalty rates, didn't they?

A. Yes, but not very much. They were allowed to continue as they were, but if they wanted to take license under our patent and use our machine the rate charged them was the same as our other licensees paid us.

Q. If they did not take a license under your patent then you would sue them for patent infringement, wouldn't you?

A. I don't know whether we would. We would have the right to.

Q. Well, did you?

A. No.

[fol. 1574] Q. Did you threaten to?

A. I don't remember we threatened to.

Mr. Isseks: At this time, Your Honor, I would like to offer all formal documents in connection with the closing of the Howard deal. They are rather bulky, but it is the only way I know how to do it.

The first document, Agreement for Purchase of Stock of Howard Automatic Glass Company, agreement dated 23rd day of June, 1922. It purports to be signed by various parties, among them Beech-Nut Packing Company, Hartford-Fairmont Company, Howard Automatic Glass Feeder Company, and a number of individuals including Mr. Howard, and I would like to have that document, with all the exhibits, all of which was furnished us by the Hartford-Empire Company, as the next exhibit.

The Court: What date does it bear?

Mr. Isseks: Purports to be dated as of June 23, 1922. That is Exhibit 61.

First I would like to have marked a document which purports to be an assignment of patent and patent rights. It is dated February 21, 1923, signed by Howard Automatic Glass Feeder Company, and it purports to be an assignment from that company of patents to the Hartford-Empire Company.

Mr. Middleton: Is that another exhibit?

Mr. Isseks: Yes. It is Exhibit 62, Mr. Middleton.

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[fol. 1575] The Court: You offer now Exhibit 61?

Mr. Isseks: Yes, and 62 and 63, documents coming from the files of Hartford, and they were furnished to us by Hartford.

Mr. Emery: Objection.

The Court: They may be admitted over objection.

[fol. 1576] Q. Now, Mr. Smith, in 1922 there was another feeder that was on the market, was there not, called the Miller Feeder?

A. That is correct.

Q. Did you have any negotiations with Mr. Miller?

A. You mean the company or did I personally?

Q. I will take you personally first?

A. Yes.

Q. What was the nature of Mr. Miller's business?

A. He was a manufacturer of forming machines and of the type of the automatic feeder which you call the Miller Feeder.

Q. How many feeders did he have out in the period around 1922 and 1923?

A. I could not tell you. He had quite a number.

Q. Didn't he have about more than one hundred feeders in the hands of some 36 licensees?

A. I would say just from recollection.

Q. I will take your recollection.

A. That he had somewhere approaching 100 feeders. I would not know the number of companies. I have no idea of that.

Q. But he had a lot of them out?

A. Yes.

Q. He was a real problem too, wasn't he?

A. Oh, yes, also an infringer.

Q. That is the position you took?

A. Absolutely.

Q. The position he took was that he was not an infringer?

A. Correct.

Q. In other words, you were having a fight about it?

[fol. 1577] A. We were. He was one of the pirates.

Q. He took the position you were a pirate?

A. He must have to some extent.

Q. The same way the Howard Company took the position you were a pirate?

A. Howard took the position he thought he had a valid claim on our feeder.

Q. Owens took the position you were a pirate?

A. Yes.

Q. You took the position they were a pirate?

A. Yes.

Q. No one knew exactly where they stood?

A. Not exactly. We were pretty sure we were the originators and developers of that particular art We did not know just where we stood.

Q. Don't you remember, having read these papers in the last few days, that Mr. Owens took the position firmly that he had a better feeder and you were a pirate?

A. He took the position that their patents were dominant over our feeder, yes.

Q. Didn't Mr. Miller take the position his feeder was dominant over yours?

A. I assume he must have.

Mr. Haight: Don't assume.

Q. Judge Haight is right. Don't give any assumption.

A. I don't remember of him accusing us but he must have so considered.

Q. You paid a half million dollars to get rid of one pirate, [fol. 1578] Howard?

A. Yes.

Q. A lot of money to pay one pirate?

A. It all depends.

Q. On the situation?

A. Yes.

Q. How much did you pay Miller, now that we are talking about money?

A. I think Miller, his patent rights were purchased for around $140,000.

Q. How much did you pay Tucker, Reeves & Beatty?

A. Tucker, Reeves & Beatty, we paid a Million and Six Hundred Thousand Dollars.

Q. That is a lot of money to pay a pirate, too, isn't it?

A. It depends on the circumstances.

Q. So I won't forget, Miller was paid, you say, $140,000?

A. Something like that.

Q. Who paid half of it?

Mr. Haight: I object. It assumes somebody did.

Q. I will ask, did anybody pay half of it or did you pay all of the money?

A. Can you give me the date of the purchase?

Q. The purchase was made after the Owens contract, after April 29, 1924,—some time in August, 1925?

A. Then I think they paid half.

Q. Who paid half of the money that was paid to the Tucker, Reeves & Beatty people?

A. Owens.

[fol. 1579] Q. In 1922 when you paid a Half Million Dollars you paid it all to Howard?

A. Correct.

Q. I show you a document which is dated October 26th, 1922, and marked Government's Exhibit 64, and purports to be a letter written by you as vice-president according to the copy I have, Hartford-Fairmont Company to Mr. Falck. This document is certified to as genuine, I believe, as coming from the files of the Corning Glass Works.

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[fol. 1580] Q. I hand it to the witness, and I will ask whether you wrote that letter. You wrote that letter, did you not?

A. I have no doubt but what I wrote that letter.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Emery: Objection.

The Court: It may be admitted in evidence.

Mr. Isseks: I would like to have it read, please.

(Reading Exhibit 64.)

Q. How do you go about getting uninspired news items in the paper?

A. You are asking me?

Q. Yes.

A. I would not know.

Q. Hartford did it, didn't they?

A. Not that I know of.

Q. I hand you a copy of a night letter purporting to have been written on January 26th, 1925, by you, the witness, to H. H. Baker at the Owens Company, and ask you whether you sent that telegram or night letter; the document is marked Government's Exhibit 65. It has been certified as a genuine document coming from the Hartford-Empire.

Mr. Wall: It is from the Hartford-Empire, isn't it?

Mr. Isseks: That is right.

A. I have no reason to deny it.

Q. Who is Mr. H. H. Baker?

A. He was an officer of the Owens Bottle Company.

Q. You notice this telegram is sent by you, isn't it, more [fol. 1581] than a year after the contract between your company and the Owens Company in 1924?

Mr. Wall: Less than a year.
Mr. Isseks: What is the date of the contract?
Mr. Wall: April 9, 1924, was the exhibit that you put in.
Mr. Isseks: Telegram is dated January 26th. I am sorry. I thought it was June.

Q. It was eight months later you sent that telegram?
A. Yes.
Q. What was Mr. Baker's position with the Owens Company?
A. If I remember correctly, at that time he was treasurer.
Q. I hand you a document which has been marked Government's Exhibit 66, which purports to be a photostatic copy of an original telegram from Mr. Baker to you of January 27th, 1925. This, too, is stipulated as genuine from the files of the Hartford-Empire Company. I will ask you whether you received that telegram from Mr. Baker in reply to the telegram you sent him the day before?
A. I have no reason to deny it.

Mr. Isseks: I offer both telegrams, Your Honor, Exhibits 65 and 66.
Mr. Emery: Objection.
The Court: They may be admitted over objection.
Mr. Isseks: Thank you. I would like to have them read.

(Reading Exhibit 65.)

[fol. 1582] (Reading Exhibit 66.)

Q. Now, Mr. Smith, by 1925 Colonel Brown had become associated with your company, had he not?
A. Yes.
Q. That is a gentleman seated at the counsel table?
A. Yes.
Q. A defendant in this case?
A. Yes.

Mr. Haight: And a rather handsome gentleman?
Mr. Isseks: Yes, sir. I offer at this time Government's Exhibit 67, a memorandum dated February 26th, 1925, from the defendant, R. D. Brown, to the witness, with indications that copies went to H. K. Smith and W. H. Honiss, and it

is stipulated as genuine from the files of the Hartford-Empire Company. The photostat is a little indistinct but I will hand the witness a clear copy.

(Witness is examining document.)

Mr. Isseks: As I understand it, Exhibit 58 is a copy of what is in the minutes of June 23, 1922?
Mr. Wall: That is correct.
Mr. Isseks: With that in mind, I would like to offer the entire exhibit in evidence at this time.
The Court: In addition to the Howard part?
Mr. Isseks: Yes.
Mr. Emery: Objection.
The Court: It may be admitted over objection.

Q. You have read, have you not, Exhibit 67?
A. I have.
[fol. 1583] Q. The memorandum from Mr. Brown to you dated February 26th, 1925?
A. I have.
Q. Did you receive that in the regular course of business?
A. I do not deny that I received it.

Mr. Isseks: We offer it in evidence.
Mr. Emery: Objection.
The Court: It will be admitted over objection.
Mr. Isseks: I would like to have it read.

(Reading Exhibit 67.)

Q. This document is dated February 26th, 1925. The deal with Miller was made some time thereafter, was it not?
A. I think it was made in '25, Mr. Isseks.
Q. That is right. Don't you remember about the same time in 1925 that you consummated a deal with the Miller people you also made a deal with the Tucker, Reeves & Beatty people?
A. I don't know whether that Tucker, Reeves & Beatty deal was '25 or the first of '26. Was it '25?
Q. I think the record shows it was '25.
A. All right.
Q. Before we finish up the Miller deal I would like to go back to the Tucker, Reeves & Beatty deal because I think the memoranda we will later come on will talk about both matters. Who are Messrs. Tucker, Reeves & Beatty so far as you know?

A. Mr. Tucker was an employe of the Federal Glass Company. Mr. Reeves was an employe of the Federal Glass Company, and Mr. Beatty was president of the Federal Glass Company.

[fol. 1584] Q. Now, the Federal Glass Company was a manufacturer of glass, wasn't it?

A. That is correct.

Q. And it also had the applications?

A. The Federal Glass Company did not have the applications. The three gentlemen named owned the applications.

Q. Beatty was the head of the company?

A. He was in the executive position.

Q. Did they have a patent, or merely application?

A. In '25?

Q. Yes, sir,—no, 1919. I want to go back a little further.

A. I do not remember a patent in 1919. I know very little about patents, Mr. Isseks.

Q. I appreciate that. But they were in the glass business, were they not?

A. In 1919?

Q. Yes.

A. I would not know. They might have been starting, just about starting at that time or in 1918.

Q. Were they in conflict with you?

A. In the patent office?

Q. Yes.

A. Yes.

Q. They took the position they were prior. You took the position you were prior?

A. Correct.

Q. Do you remember having any conference with people [fol. 1585] in your own organization as early as 1919 with regard to the Tucker, Reeves & Beatty Feeder situation?

A. I do not happen to remember a conference but I perhaps did have. I don't happen to remember them. It is quite possible I have had.

Mr. Isseks: Your Honor, at this time I would like to have marked a document which is—the copy we have is a copy made, I think, by the government way back in '38. It is dated September 23, 1919. It is four pages. It has a report to Mr. F. G. Smith, re Tucker, Reeves & Beatty Feeder situation, unsigned. It has in the left hand corner, Tucker, Reeves & Beatty, 1919-1923. It is stipulated as coming from the files of the Hartford-Empire Company.

A. Who made that report?

Mr. Isseks: It does not say, Mr. Smith. If counsel for Hartford have the original perhaps we can determine the writer.

Mr. Wall: There is a report and unsigned letter. I don't know if this is the one.

Mr. Isseks: This is an unsigned letter.

Mr. Wall: That seems to be the letter.

Mr. Isseks: Look at it. Maybe it is the letter. Well, with your permission I would like to take their copy of the letter and we will give you ours as soon as we can find it, and I think we can show that memorandum was attached to the letter.

Mr. Haight: You want it marked. You are not offering it yet?

[fol. 1586] Mr. Isseks: Yes, I want it marked. The letter is dated September 23, 1919, the same date as the memorandum, apparently signed by Mr. Peiler, addressed to the witness, and has, re: Tucker and Reeves Matter, and has on the top, Acquisition Feeders T. R. & B. It corresponds with the original document stipulated. I would like to have the letter marked Exhibit 69, and hand the witness both.

Mr. Middleton: I can't hear you.

Mr. Isseks: 68 is the memorandum. 69 is the letter. Perhaps you would like to recess now and have the witness read it during the recess.

The Court: All right.

Q. I will hand the witness Exhibits 68 and 69. Counsel for Hartford have a copy of the letter. Will you be kind enough to read them to see if it does not refresh your recollection that Mr. Peiler sent you a letter and report in 1919 regarding the Tucker-Reeves situation?

The Court: I think we will take the noon recess at this time, and the witness will read them during the noon hour.

(Noon recess.)

[fol. 1587] (At 2 o'clock p. m., Friday, March 7, 1941, the trial was resumed.)

Mr. Isseks: I would like to substitute for the photostat given you by Mr. Wall, Exhibit 69, the typewritten copy.

Q. Mr. Smith, did you read Exhibits 68 and 69?
A. I did.
Q. Mr. Peiler was who at that time?
A. Mr. Peiler was our chief engineer.
Q. And was he at that time a member of your Board of Directors?
A. I have forgotten.
Q. He is now a member of the Board of Directors?
A. No.
Q. Has he ever been a member of the Board of Directors?
A. He may have been in the early days but I have forgotten. The records will show.
Q. He is a defendant in this case?
A. Yes.
Q. He is still alive?
A. Yes.
Q. He has been with your company for many years?
A. Yes, and still is.
Q. Did you receive the letter which is Exhibit 69, and the attached memorandum, Exhibit 68, in the regular course of business?
A. I don't remember, but I have no reason to doubt it.

Mr. Isseks: I offer it in evidence.
The Court: It will be received, over objection.
[fol. 1588] Mr. Isseks: I would like to have 69 read first, which is a letter, then the memorandum,—68.

(Thereupon Exhibit 69, letter to F. G. Smith, re Tucker and Reeves matter, September 23, 1919; and memo, dated September 23, 1919, report to Mr. F. G. Smith re Tucker and Reeves feeder situation, were read by Mr. McCracken.)

Mr. Isseks: At this time I would like to have marked Government's Exhibit 70, a memorandum which has on the top right-hand side "June 26, 1924" and then in parenthesis: "Extract from report of Mr. Peiler dated June 21, 1922", then has in the center: "Report of Federal Feeder", at the end signed "Karl E. Peiler",—all one document, two pages. It is stipulated as coming from the files of the Hartford-Empire Company. I would like to have it marked. (So marked.) And then, in view of the identification of Mr. Peiler, and the further fact there is a notation on this for Mr. Honiss, I offer it in evidence, without interrogating the witness.

The Court: It will be admitted, over objection.

Mr. Isseks: I would like to have it read.

(Said Government Exhibit 70 read by Mr. Lewis.)

Mr. Isseks: Now, Your Honor, at this time I would like to have read from Exhibit 58, which consists of a memorandum of Hartford-Fairmont Executive-Committee Meeting for June 23, 1922, at the Hotel Belmont, New York City, at which were present Messrs. Arkell, Goodwin Smith, Cunningham, Peiler, Honiss, Ernest Smith and Knox Smith, the matter relating to the Federal Feeder. It begins at the bottom of page 4 and runs to page 6.

* * * * * * *

[fol. 1589] The Court: And that is dated June 23, 1922.

Q. Among the licensees of the Tucker, Reeves and Beatty people, was the Winslow Glass Company, was it not?

[fol. 1590] A. Right.

Q. Also Capstan?

A. Right.

Q. And Hemingray?

A. Right.

Q. And Federal?

A. Right.

Q. And Hart?

A. Right.

Q. I want to clear something up. Mr. Parham, during the recess, asked me to bring out that Federal Glass Company did not either license or distribute the feeders, but it was done by a separate organization of Tucker, Reeves and Beatty.

A. As I understand it, Mr. Isseks, that was a partnership,—Tucker, Reeves and Beatty.

Q. All I want is the facts. I didn't know the fact. I just assumed it was the same company.

A. No.

Q. I will take the facts as they were. We want it straightened out. I would like to show you a document which is marked Government's Exhibit 71, which has on the top, "Conference of August 29, 1924, as to Tucker, Reeves and Beatty contracts. Present F. G. Smith, R. D. Brown." It is stipulated as coming from the files of the Hartford-Empire Company. I will show you this, and ask you, first, after reading it, whether you wrote it.

A. (Witness examines same.)

Q. Did you write it?

A. I don't remember that I did.

Q. Do you remember the conference?

A. No, I remember nothing about it. There are no marks of identification.

Q. It is stipulated as coming from the files of your company.

A. It may have but I don't remember it at all.

Q. Have you any recollection whatsoever about it?

A. Not at all.

Q. Do you recall having any conversation with Col. Brown with regard to how you were going to work out the various licensees of Tucker, Reeves and Beatty, if as and when you took over their patents?

A. No, I don't remember any such meeting.

Q. You don't question the meeting took place?

A. I don't deny it but I don't have any recollection of it at all.

Q. This document came from the files of the company, stipulated as such. Col. Brown at that time had what position with your company?

A. Patent counsel.

Q. He is now a Director of your company?

A. He is.

Mr. Isseks: Your Honor, I offer the document in evidence.

The Court: It may be admitted, over objection.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 71 read by Mr. McCracken.)

[fol. 1592] Q. Now, Mr. Smith, there is some handwriting on this document, Government's Exhibit 71, and it says over here "Unlimited right to new feeder under present "—something, it looks like "license".

A. Yes.

Q. It is signed 5/29/25, H.K.S., isn't it?

A. Yes, but that is not his writing.

Q. Whose handwriting is it, if you know?

A. I wouldn't know.

Q. Not yours?

A. No.

Q. Here it says, "Additional milk bottles" in handwriting. Do you recognize that handwriting?

A. That looks like Col. Brown's.

Q. Now, Mr. Smith, under your 1924 contract with Owens, you remember you could not make any acquisition without giving them opportunity to share therein or obligating them?

A. If we made any further purchases on our own volition, they had the right to share, also an obligation to pay half.

Q. In other words, you could require them to pay half?

A. Yes, as I remember.

Q. In that connection do you remember a time came——

A. Now, wait a minute. Excuse me. I don't know I am correct on that. I will have to look it up.

Q. What is your recollection?

A. My recollection is, as I told you, but I am not dead sure.

Q. All right. Do you remember a time came when you got into conferences with the Owens people with regard to the acquiring for both of you the Tucker, Reeves and [fol. 1593] Beatty rights?

A. I think we had several conferences.

Mr. Isseks: I now would like to have marked as Government's Exhibit 72 a memorandum dated October 16, 1924, bearing the initials "W.H.H; L.W.R", memo of conference October 16, 1924, with Messrs. Tucker, C. B. Belknap, F. G., H. K. and E. W. Smith, Col. Brown and W. H. Honiss", and the signature at the end is "W.H.H." on the photostat we have.

Mr. Wall: Where does that come from?

Mr. Isseks: Appearing on the bottom is 2767. It is stipulated as coming from your files, Hartford-Empire. I hand it to the witness and ask him to read it, please.

[fol. 1594] (Witness reading Exhibit 72.)

Q. Have you read it, sir?

A. I have.

Q. Do you remember that conference?

A. No, but I do not deny it.

Q. And Mr. Baker and C. B. Belknap were there on behalf of Owens, were they not?

A. So it states.

Q. And the rest of them were there on behalf of Hartford-Empire?

A. Correct.

Q. Does the memorandum set forth generally what took place at the conference?

A. I could not tell you, Mr. Isseks. I have no memory on it.

Q. You do not question the accuracy of the memoranda?

A. I have no reason to doubt something like this may have happened but I have no knowledge of it, no memory of it.

Mr. Isseks: I offer it in evidence. (Exhibit 72.)

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Reading Exhibit 72.)

Q. Do you remember that T. R. and B. did decline the proposition?

A. No.

Q. Don't you remember Owens sued them in the Federal Court at Columbus, Ohio, on December 2nd, 1924, because they turned down your proposition?

A. I have entirely forgotten it if those are the facts.

Q. I am handing you a paper that came from your files. I [fol. 1595] will not have it marked an exhibit. It is dated December, 1924. It is excerpts from the National Budget of December 6th, 1924, and The Glass Worker of December 6th, 1924——

Mr. Wall: It at least came from the files. If you offer it to show the date of the suit we will admit it as being substantially right and furnish the date later.

Mr. Isseks: That is all right.

Q. Now, Mr. Smith, do you remember there was some discussion in connection with the acquisition of Tucker, Reeves & Beatty, the acquisition by Hartford and Owens of the Tucker, Reeves & Beatty patent and the Miller patent might constitute a violation of the Federal Anti-Trust Laws?

A. No.

Q. I now show you a letter dated July 9, 1924, from Lloyd T. Williams, counsel in this case, and at that time for Owens and Hartford, stipulated as genuine by Hartford-Empire Company and marked here as Government's Exhibit 73, and ask you whether that refreshes your recollection?

Mr. Isseks: My associates say I did not point out, according to the memoranda, the suit was filed on December 3rd, 1924, at Columbus, Ohio, in the Federal Court by Owens against Tucker, Reeves & Beatty.

Mr. Wall: I think that is right if your associate will say it.

Mr. Isseks: He doesn't know exactly. We will check up on it later.

Q. Have you read it?

A. I have.

[fols. 1596-1610] Q. Does that refresh your recollection that the question of the acquisition of Tucker, Reeves & Beatty and Miller was brought up at the time and question was raised as to whether such acquisition would violate the Federal Anti-Trust Laws?

A. Mr. Isseks, I have never seen that letter. I would assume that in all our purchases or deals or acquisitions that the matter of legality of such purchases or acquisitions would be taken into consideration by our attorneys, and if they said to me in the final analysis they thought we were safe in proceeding, we would proceed.

Q. You are not saying that at no time were you given advice with regard to the legality or illegality along the lines expressed in that letter?

A. I don't remember any.

Q. I will show you another document later on that you wrote, but in the meantime I am going to offer this document and, Your Honor, I specifically state that this letter is not offered to show the truth of the statement made by Mr. Williams but only to show the design, motive and intent of the Hartford-Empire people in the future actions taken by that company, knew all the information and the statements contained in that letter. It is a limited purpose.

* * * * * * *

[fol. 1611] The Court: You may pass on to the next matter. I am not going to admit or deny this at this time.

Mr. Isseks: Thank you, Your Honor.

I now offer a document entitled "Memorandum by F. Goodwin Smith, with notes by Herbert K. Smith and Lloyd T. Williams, plus memorandum by Vernon M. Dorsey, rela- [fol. 1612] tive to purchase of Federal Glass Company; August 7, 1925."

The Court: You are offering this as number what?

Mr. Isseks: Government's Exhibit No. 74.

* * * * * * *

[fol. 1613] Mr. Isseks: I am told the signature at the end is not that of the witness "F. G. Smith".

Q. I will ask you, is that your signature?

A. No.

Q. Is that your handwriting on the first page?

[fol. 1614] A. No.

Q. Both of those handwritings are by whom?

A. I think by Mr. Honiss.

Q. Did you read Exhibit 74, consisting of eight pages, plus two pages, during the recess?

A. That is right.

Q. The first eight pages, except for the 4-line memorandum at the end, was written by you, was it not?

A. I have no doubt of it.

Q. And the other two pages, which bear the signature of Mr. Dorsey, were submitted to you, were they not, by Mr. Dorsey?

A. I think so.

Mr. Isseks: Your Honor, I offer the eight pages, the entire Exhibit 74, at this time.

Mr. Wall: Objection noted.

Mr. Sayles: That is not Mr. Dorsey's signature.

Mr. Isseks: The witness said he wrote it but I am not saying it is Dorsey's signature. I am asking whether it was submitted to him by Mr. Dorsey. I believe his answer was "I think so".

The Witness: I think so, but I don't remember it.

Q. Look at the title-page of the whole thing, does that refresh your recollection? Mr. Dorsey rendered an opinion as well as Messrs. Knox Smith and Williams?

A. I don't deny he did.

Mr. Isseks: I offer the entire exhibit of 10 pages.

The Court: It may be admitted over objection.

* * * * * * *

[fols. 1615-1617] Q. Do you remember there was an opinion by Mr. Falck on the same matter?

A. No, I had forgotten it.

* * * * * * *

[fol. 1618] Mr. Isseks: Thank you very much.

At this time I would like to have marked, a memorandum dated June 1, 1925, from Knox Smith to Mr. Williams. The genuineness has been stipulated, as I understand it. The first is a letter dated June 1, 1925, from Knox Smith to Mr. Williams, which has a number on it, 4182. Attached to it is a memorandum of five pages which has at the end of it, "H. K. S." and starts on the top, "Procedure O'Neill". I would like to have both documents marked as separate exhibits, the letter first with the next number,—75, the clerk says,—and a memorandum, five-page memorandum with the date on it 6/1/25, in pencil "H. K. S.—L. E. S.", entitled "Procedure O'Neill", is Government Exhibit 76.

Mr. Wall: It does not have a date?

Mr. Isseks: I am willing to have counsel tell me the original does not have a date. If they question it I am perfectly willing to have it erased, and I will do the erasing. I don't know how it got there. It has a number on it, 1259. Is that right, Mr. Wall?

Mr. Wall: That is correct.

Q. I would like to show the witness the exhibit and ask [fol. 1619] him if it refreshes his recollection that he had certain conversations with Knox Smith and others regarding the procedures to be followed in making various acquisitions, particularly the Miller and Tucker, Reeves and Beatty acquisitions?

A. May I read it first?

The Court: Yes, you may.

[fol. 1620] The Witness: All right, Mr. Isseks.

Q. Have you read it, sir?

A. For the first time.

Q. All right, that is an answer. You notice on document, Exhibit 75, "Reference 0-3-1"?

A. Yes.

Q. It is the file number, isn't it?

A. I would not know, Mr. Isseks.

Q. All right, sir. I will see if I can refresh your recollection. The document is dated June 1, 1925. Don't you recall three days before that you and Mr. Knox Smith and Mr. Boshart—who was Mr. Boshart at that time?

A. He was an officer of the Owens Company.

Q. At that time he was president, wasn't he, in '25?

A. I think so. I am not sure.

Q. And then Mr. Williams and Mr. W. J. Belknap had a conference on the four subject-matters of the memorandum, namely, Tucker, Reeves and Beatty, Miller, Lynch and O'Neill?

A. Was I at that conference?

Q. I show you a diary entry for May 28th, and ask you if you don't remember attending the conference and I direct your particular attention to the indication that you wrote various memoranda of the conference that are found in file 0-3-1?

A. I remember sometime I was out here in Toledo, Mr. Isseks, and met Mr. Boshart. I had forgotten.

Q. Don't you remember at that time, at that conference, you four gentlemen were considering paying a million dol- [fol. 1621] lars and a half for Federal?

A. I don't deny that. I do not happen to remember it but it do not deny it.

Q. Were you considering purchasing Lynch for a million and a half?

A. No. I have no recollection.

Q. Were you considering buying O'Neill for -300,000?

A. No, I have a very faint and indistinct recollection that the O'Neill matter was discussed. Now in what way or how, I have no recollection.

Q. Now in that connection—I hate to do this, Your Honor, it means passing documents, but this is a very important subject-matter and I would like to show the witness the next exhibit, which may help refresh his recollection. I will have it marked—it purports to be a photostatic copy of a letter of Mr. Williams to Mr. Knox Smith, dated June 6, 1925, and has attached to it three pages of memorandum, undated, and by its contents there is an indication the three pages are attached to the first page. I would like to have that marked Exhibit 77 and see if that refreshes his recollection as to the contents.

Mr. Isseks: You have them, Mr. Wall, don't you?
Mr. Wall: No, but I know it is in the file.
Mr. Isseks: It is stipulated as genuine?
Mr. Wall: Oh yes. I have no doubt of it.
Mr. Middleton: May I see the three pages?
Mr. Isseks: Yes sir.

Q. I show it to you, Mr. Smith, and ask you to read the [fol. 1622] document—four pages—and take particular reference to the memoranda attached and see if that does not refresh your recollection as to what took place at the conference in which Mr. Boshart, Mr. Williams, Mr. W. J. Belknap and Mr. Knox Smith were present.—I would like to ask you one more question: Who is Mr. W. J. Belknap?

A. Patent attorney.

Q. He is a brother to C. B. Belknap?

A. Yes.

Q. At that time did he represent Owens or Hartford?

A. I think at that time, Owens.

Q. See, if after reading that memoranda, your recollection is refreshed. Have you read the document, Government's Exhibit 77?

A. I have.

Q. Does that refresh your recollection that you did attend a conference sometime in the late spring of 1925 at which were present Mr. Williams, Mr. Boshart, Mr. W. J. Belknap, yourself and Mr. Knox Smith?

A. All I really remember, Mr. Isseks, that I came out here and talked to Mr. Boshart. I had forgotten that Mr. Williams was present. Even this letter of his does not recall to my mind that he was, although I do not doubt that he was. It does not refresh my mind very vividly about anything in particular.

Q. Does his letter, and particularly the memorandum which is part of the Exhibit 77, set forth what transpired at the conference which you gentlemen had, namely, the [fol. 1623] matters which you considered?

A. That I could not tell you.

Q. Does it set forth, generally?

A. No. I assume these matters must have been discussed in some way but I do not remember the discussion.

Q. Do you remember that you were contemplating paying a million and a half dollars for Federal; you do remember that?

A. Yes.

Q. You paid them more, in fact?

A. Yes.

Q. And then you were contemplating paying as much as a half-million dollars for Miller?

A. No.

Q. You notice on the second page, or first page of the memorandum, Mr. Williams indicates a half-million dollars was to go to Miller?

A. I don't remember any such amount.

Q. Do you remember considering at that time paying as much as a million and a half dollars for Lynch?

A. No, sir, I do not remember that Lynch thing at all.

Q. Do you remember considering paying as much as $300,000.00 for O'Neill?

A. No—well, I remember a discussion about O'Neill, something about his plant out here, and he wanted to sell his business and that is all I know.

Q. Do you remember there was consideration, at this conference, of various legal matters mentioned by Mr. Knox Smith?

[fol. 1624] A. No.

Q. Please wait until I finish,—in Exhibit 76?

A. No.

Q. You don't remember that at all?

A. I do not.

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Q. Didn't you and Mr. Knox Smith prepare a memorandum on May 28th of what transpired at this conference concerning the Tucker, Reeves and Beatty and other matters?—and I show you the diary of May 28th by Knox Smith. The question is whether you prepared a memorandum of what transpired?

A. I do not remember doing it, but if you show me the memorandum I am very glad to admit that I did.

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[fol. 1625] Mr. Isseks: At this time we would like to offer in evidence Exhibits 75, 76 and 77. Exhibit 75 is a letter written by Knox Smith to Mr. Williams June 1st. Exhibit 76 is a memorandum entitled, "Procedure". Exhibit 77 is Mr. Williams' letter. As to Exhibits 75 and 76, I suppose Your Honor will treat them in the same class as the other letters written by Knox Smith going to someone else outside of the company. As to Exhibit 77, that is not, as I understand it, a statement of opinion by Mr. Williams. It is a statement of what was discussed, in part, at this meeting, and we submit that it is a different thing than I believe Exhibit 73, which His Honor said he would take under advisement. As to Exhibit 73, Your Honor, in view of 74, which is the lengthy report made by the witness in which he indicates the views of Knox Smith and of Mr. Williams, I submit, Your Honor, in view of that memoranda written by the witness, that Exhibit 73 is clearly admissible as well as Exhibit 77.

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[fols. 1626-1636] Mr. Emery: We object.

The Court: It may be admitted over objection.

Mr. Isseks: Of course the Government does not agree with the statements made by counsel.

The Court: They may be admitted in the record. I will say to counsel as to Exhibit 73, that I have made up my mind to admit 73 for what it may be worth.

[fols. 1637-1639] The Court: The Court has been going on the theory that an objection made by one defendant would go to the question of materiality, relevancy and competency.

Mr. Day: That is the reason I raised the question.

The Court: The usual reasons for an objection. But it does occur to me that if any one of counsel, on behalf of his client, desires to have an objection cover some specific matter other than the materiality, relevancy, and competency, he ought to rise and state it.

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[fols. 1640-1649] The Court: I think that we have an understanding now. If counsel desires to make an objection, on some ground other than the usual grounds which the Court has enumerated, he ought to rise and make that objection. The matter can then be disposed of. And if counsel desires to interpose objections to certain specific admissions that have been made in the past, he had better do that.

You may proceed.

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[fol. 1650] Q. I hand you Government Exhibit 74, which is a memorandum, written by you with notes by Mr. Dorsey, and ask you whether you remember receiving an opinion from Mr. Falck, and in that connection, I direct your attention to the handwritten note on the first cover-page of Exhibit 74, which says: "For Falck's opinion on these notes see Corning 1923-29 8/27/25".

A. I don't remember it and I don't deny it.

Mr. Isseks: Your counsel, over the week-end, has produced for the Government, a photostatic copy of an original letter from Mr. Falck to you dated August 27, 1925, and I hand it to you. It is the only copy we have been furnished. I would like to have it marked Government Exhibit 78. (So marked.)

Q. I understand that comes from the files of Hartford?

[fol. 1651] Mr. Wall: If it is the original, yes, it does.

Mr. Schaeffer: Identify it, Mr. Isseks.

Mr. Isseks: I will in a second. Exhibit 78, not admitted, is on the letterhead of Corning Glass Works, dated August 27, 1925, from South Dartmouth, Massachusetts, addressed: "My dear Goodwin". There is no other address on it. Signed: "Alexander D. Falck".

Q. I ask you, Mr. Smith, whether you received that in the regular course of business?

The Court: It is a letter?

Mr. Isseks: Yes, it is. It doesn't have an addressee, just addressed, "My dear Goodwin".

Q. Did you receive that?

A. I think I did; I don't remember it.

Mr. Isseks: I would like to show it to Your Honor first before I offer it. I would like to ask the witness a few questions first.

Q. You recall, Mr. Smith, that in Exhibit 74 you stated on page 7 as follows: "Mr. Williams is in favor of making the purchase on the basis of the appraisal of its advantages as against its disadvantages, and the disadvantages that exist or arise from not making it. He, however, is not so confident that we are entirely safe from attack under the Anti-Trust Laws as Mr. Knox Smith is." You remember writing that, do you?

A. I think I admitted it.

Q. I am trying to refresh your recollection you wrote this particular sentence.

[fol. 1652] A. It is part of my report.

Q. Do you remember Mr. Williams giving you that advice?

A. No, I don't remember it. If he so states, he did.

Q. Mr. Williams was counsel for Owens, was he not?

A. Correct.

Q. Mr. Knox Smith was your general counsel and secretary?

A. Correct.

Q. Mr. Falck was what, at that time?

A. Vice-President and a director.

Q. Of what?

A. Hartford-Empire Company.

Q. He was also an executive of Corning, was he not?

A. I think he was president.

Q. According to that memorandum, which is Government Exhibit 78?

A. Yes.

Q. You knew, did you not, Mr. Falck was a lawyer, and is a lawyer?

A. I don't know as that occurred to me. In his early days he practiced law.

Q. You knew he was a man trained in the law?

A. He had practiced law. I suppose anybody who practices law must be trained in it.

Q. As a matter of curiosity, were you ever trained in the law, Mr. Smith?

A. Never.

Mr. Isseks: I offer Government Exhibit 78 in evidence. Mr. Falck, as Your Honor knows, is a defendant in this case, and is alleged to have been a coconspirator as early as some-[fol. 1653] time prior to 1925.

The Court: It may be admitted over objection.

Q. Mr. Smith, the other day I showed you Mr. Knox Smith's diary entry for May 28th. I believe you testified at that time that if there were any memoranda written they would be in the files. Looking at the diary entry, and looking also at the three-page document which is dated on the top May 28, 1925, on the stationery of Hartford-Empire, and purports to be signed by you, marked Government's Exhibit 79, for the record it states in a box on the top, "Memorandum of Conference held in New York City May 28, 1925, between Mr. Boshart, president, Owens Company, and their attorney, Mr. W. J. Belknap, and Knox Smith and Goodwin Smith representing the Hartford Company"; and I ask you, Mr. Smith, whether you wrote that memorandum. (Witness reads same.) The question is, did you write the memorandum?

A. I did.

Q. I direct your attention to the diary entry for May 28th. There is an indication there, is there not, that you wrote a memorandum both with regard to the Tucker, Reeves and Beatty and Miller deals, and with regard to the Lynch and O'Neil matters?

A. I don't know as I unddrstand your question.

Q. Look at the diary entry and see if it does not refresh your recollection, that in addition to writing a memorandum regarding the Tucker, Reeves and Beatty and Miller matter, at that particular conference, you also wrote a memorandum regarding the Lynch and O'Neil matter?

[fol. 1654] A. No.

Q. You don't remember?

A. No.

* * * * * * *

Mr. Isseks: I offer that document written by the witness.

Mr. Emery: Objection.

The Court: It may be admitted over objection.

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[fol. 1655] Mr. Isseks: At this time I would like to offer in evidence an excerpt from the minutes of the directors' meeting of Hartford-Empire Company. The minutes themselves constitute two and one-half pages, dated September 9, 1925. May I show the Court Mr. Wall's copy? I will not offer the document itself in evidence. Most of it relates to another subject matter which is not relevant as I see it now to this case. But the first paragraph does relate to this case.

The minutes of a meeting held at the Belmont Hotel September 29th, 1925. Present: Messrs. Arkell, Dorsey, Falck, Heintzelman, Honiss, Arthur Houghton, Ernest Smith, Goodwin Smith and Knox Smith. Mr. Arkell presiding.

Minutes—"Purchases from William J. Miller and Tucker, Reeves & Beatty.

"A report giving the terms and results of the recent purchases from William J. Miller; and also from Tucker, Reeves & Beatty was read by Mr. Knox Smith and discussed, and it was voted to accept said report and to approve and confirm the said purchases and all corporate action hither- [fol. 1656] to taken in regard thereto, all as set forth in said report."

The Court: That is as far as you go on that?

Mr. Isseks: That is all, Your Honor.

Your Honor, I now offer what I understand to be the report dated August 20th, 1925, from Knox Smith to the Board of Directors, and approved by the Board of Directors. The report is eleven pages, and it is in your book of exhibits. I will have that marked Government's Exhibit 80.

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[fol. 1657] Mr. Isseks: No. I can ask him about it.

Q. I show you first, Mr. Smith, a copy of the diary of August 20, 1925, of Knox Smith meeting of September 9th?

A. September 9th?

Q. Yes, sir, the diary entry, the first part—Mr. Knox Smith, and I show you the report itself.

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[fol. 1658] A. Shall I read that through, Mr. Isseks?

Q. Yes, go ahead.

A. It contains eleven pages.

(Witness reads to himself.)

Q. Have you read that report, sir?

A. I have.

Q. Do you remember at the meeting of the Board of Directors of September 9, 1925, Mr. Knox Smith read a report of the Miller and Tucker, Reeves & Beatty transactions?

A. That is what the minutes show. I know there must have been a report.

[fol. 1659] Q. Do you know the Board of Directors approved the report and the transactions referred to in the report?

A. Of course they approved the transactions.

Q. Looking at Government's Exhibit 80 for identification, is that the report that was read by Mr. Knox Smith at the meeting?

A. I would not know, Mr. Isseks. I have been trying to see if I could not recollect reading of this long report. I would not know whether he reported—whether it was another report or whether part of his report was verbal. I do not doubt, of course, Herbert Knox Smith wrote this particular report, but as to whether this was the actual report he made at the meeting, I would not know.

Mr. Isseks: Your Honor, I offer the report in evidence, not only because it was a memorandum written by Mr. Knox Smith as to which Your Honor has reserved decision, but there was, according to the minutes of Directors, a report read by Mr. Knox Smith and discussed at the meeting, and there was a vote by the Board to accept the report and to approve and confirm the purchases and all corporate action hitherto taken in regard thereto, all as set forth in that report. It is my understanding, Your Honor, that this was the report that was submitted. I think the contents show it is the report. In the absence of any other report, so far as I know, this was submitted at that meeting.

Mr. Haight: So far as Hartford is concerned, if Your Honor please, we will not object to it as not having been [fols. 1660-1665] properly identified, providing, however, it is understood that if by further research and investigation we find it is not the report, that we have the opportunity to present that to Your Honor's attention.

Mr. Emery: I would like to have an objection, and also save the question of proof of identity.

Mr. Middleton: Similar objection on behalf of Owens.

The Court: It will be admitted over objection and subject to conditions attached by Judge Haight.

Mr. Isseks: I would like to have it read.

Mr. Emery: I don't know if Your Honor understands our objection. Until this matter stands one way or the other we would like to have the authenticity of the document subject to objection for the other defendants.

The Court: That may be done.

(Reading Exhibit 80.)

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[fols. 1666-1667] Mr. Isseks: But now it is straightened out. In view of that I offer No. 77 with the memorandum attached, and return the originals to Mr. Wall.

The Court: It may be admitted, over objection.

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[fol. 1668] At this time I should like to offer Government's Exhibit No. 108, a two and one-half page photostat, which has been stipulated as genuine, by Owens; it is an amendment of February 9, 1925, to Section 21 of the 1924 contract relating to joint acquisition of outside rights.

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[fol. 1669] The Court: It will be admitted, over objection.

Q. Mr. Smith, prior to 1928, there was a feeder outstanding known as the Rankin Feeder, was there not?

A. I think that is correct.

Q. What is your present recollection of the person or persons who controlled the Rankin Feeder?

• • • • • • •

A. I think, Mr. Pratt.

Q. Who is Mr. Pratt?

A. He was an Englishman, and interested in the manu-[fol. 1670] facture of glass, somewhere in England.

Q. Was the Rankin Feeder being used commercially in this country?

A. I think there was one, but I am not sure, Mr. Isseks.

Q. Your present recollection is that there was one?

A. That is my present recollection.

Q. Do you recall the name of the company, the glass manufacturer, that used that feeder in this country?

A. No, sir.

Q. Did you enter into negotiations with Mr. Pratt with regard to the acquisition of the Rankin Feeder?

A. I did.

Q. In that connection, did you have any conversations with representatives of Owens?

A. I think so, yes.

Q. I hand you what purports to be a photostat of a carbon copy of a letter from Mr. Carter to you. This document is marked Government's Exhibit 109, dated September 25, 1928, from Mr. Carter to the witness; and it is stipulated as to genuineness by Owens. I will ask you whether you received that letter from Mr. Carter in the regular course of business?

Mr. Isseks: I have a photostat. I would rather substitute it. The witness will probably remember it.

The Court: Is that the one that follows 108?

Mr. Isseks: Yes, Your Honor. For convenience I just as leave use the original. The witness now has a photostat of the original, produced by Mr. Wall.

[fol. 1671] Q. Did you receive that letter in the regular course of business?

A. I do not happen to remember it, but I do not deny that I received it.

Q. First of all, who was Mr. Carter, at that time, in 1928?

A. Mr. Carter was associated with the Owens Bottle Company.

Q. He was treasurer, was he not?

A. He was.

Q. Mr. Boshart at that time was president, was he not?

A. I believe so.

Q. And Mr. W. J. Belknap was counsel then for Owens at that time?

A. I think that is correct.

Q. Mr. Brown, referred to in that letter, is Colonel Brown, who is an executive of your company?

A. Undoubtedly.

Q. Mr. McCallister, referred to there, represented whom in that situation?

A. I am not sure. I assume he represented Mr. Pratt.

Q. What is your best recollection?

A. I think he did.

Q. It is the same Mr. McCallister who is of counsel here for Ball Brothers?

A. That is correct.

Mr. Isseks: Your Honor, I offer the letter in evidence.

The Court: Who is Mr. Carter?

[fol. 1672] The Witness: Treasurer of the Owens Bottle Company.

Q. At that time?

A. At that time, and so signs himself.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 109 was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, I hand the witness what is marked Government's Exhibit No. 110. It is dated October 3, 1928, from Mr. Carter to Mr. R. D. Brown; with the indication at the end thereof: "Carbon copy to Mr. F. Goodwin Smith". I have had marked a photostat of the original document which was just handed me by Mr. Wall. We have a copy.

Mr. Williams: Were we given copies of these exhibits?

Mr. Isseks: I have a copy in our files, which has been stipulated by Owens as a genuine document; and I will be glad to hand that one to Mr. Williams.

Q. Will you please read this, Mr. Smith?

(The witness does.)

Q. Have you read it?

A. I have.

Q. Do you notice the original indicates that you were sent a copy, in addition to the original being sent to Mr. Brown—it is the same Mr. Brown we talked about before—Colonel Brown?

A. That is correct.

[fols. 1673-1674] Q. It apparently was directed to him in Washington, care of Dorsey & Cole?

A. Yes, sir.

Q. Do you remember receiving a copy at Hartford in the regular course of business?

A. I do not happen to remember it. I do not deny it.

Mr. Isseks: Your Honor, I offer it in evidence.
The Court: It may be admitted, over objection.
Mr. Isseks: I should like to have it read.

(Thereupon, Government's Exhibit No. 110 was read by Mr. Kramer, of counsel for the government.)

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit 111 a photostatic copy of an original letter sent by the witness to Mr. Boshart, on October 18th, 1928. The original is stipulated as genuine, and coming from the files of Owens.

Q. I show you, first, Mr. Smith, Government's Exhibit No. 111, and ask you whether the signature thereon is your signature?

A. It is.

Mr. Isseks: With that, Your Honor, I offer the letter in evidence.

Mr. Emery: Objection.

The Court: It may be admitted, over objection.

* * * * * * *

[fol. 1675] Q. Did you sign the letter in the regular course of business?

A. I assume so.

Mr. Wall: Did he get the $30,000? That would be the real test.

Mr. Isseks: I should like to reserve Numbers 112 and 113, the formal documents in connection with the closing of this Rankin deal. I should like to ask the witness one question.

Q. You state in paragraph 3 of this letter that within the last day or so Mr. Pratt has had an offer made to him by others for his patents which he claims. Did he tell you who made the offer to him?

A. He did not.

Q. There was a feeder, was there not, known as the Raeder Feeder?

A. I don't remember it.

Q. My mentioning of the name comes as a completely new matter to you?

[fol. 1676] A. Quite.

Q. Do you remember, Mr. Smith, that at the time you made your contract in 1924 with the Owens people, there was a suit pending by Hartford against the United States Glass Company, in which your company, Hartford, claimed that the United States Glass Company was infringing a patent which you then owned, known as the Hitchcock Patent?

A. I remember we brought suit against the United States Glass Company under that patent.

Q. Do you remember how that case went?

A. I think, against us.

Q. Against Hartford?

A. Yes, sir.

Q. Do you remember your company did not appeal that decision?

A. I don't think we did, Mr. Isseks.

Q. Do you remember that in connection with your negotiations with Owens, the matter of whether or not you would appeal that decision was discussed?

A. No, I don't remember.

Q. Do you remember that before you made your settlement with Owens, Owens had sued the J. T. & A. Hamilton Company, a licensee of yours?

A. Very well.

Q. Do you remember that Owens was alleging that your patents, namely, the Hitchcock Patent which you then owned, and anything else you owned, infringed the Lott and Brookfield Patents, which Owens claimed to have owned?

Mr. Haight: May I object to that? One patent cannot infringe another. You mean the machines they were putting [fol. 1677] out infringed the Lott and Brookfield Patents?

Mr. Isseks: I will rephrase the question in view of Judge Haight's suggestion.

Q. Do you remember that prior to your settling with Owens, Owens was suing a licensee of yours, named Hamilton?

A. That is correct.

Q. Claiming that the machines used by Hamilton infringed the Lott and Brookfield Patents, which Owens owned?

A. That is correct.

Q. Do you remember what was done with regard to that case after Owens and Hartford made a settlement?

A. I assume it naturally was withdrawn.

Q. Do you not remember that Hartford went a little further and got its licensee to consent to a decree in that case?

A. I do not happen to remember that particular thing.

Q. Whatever the record shows is accurate?

A. Yes, sir.

Mr. Isseks: Does Mr. Philbin want to make an objection?

Mr. Philbin: The questions just asked the witness and the answers illustrate the difficulties in interrogating concerning matters which occurred back in 1924. The actual fact was there were two entirely separate and distinct suits: one was on the Brookfield Patents, and the other suit was on the Lott Patents. The first suit, on the Brookfield Patents, was dismissed without prejudice; and in the second suit, there was a consent decree. The Lott Patents were [fol. 1678] valid and were infringed.

Mr. Isseks: I will take Mr. Philbin's statement as accurate, subject to correction from anybody.

Mr. Haight: That was all a part of the settlement.

Mr. Isseks: I am glad to hear that.

Mr. Philbin: The suit was originally brought against the Hamilton Company, which used the Hartford Feeders. Then the Hartford Company intervened and became a defendant. So the consent decree entered was against both Hamilton and the Hartford Company with respect to the validity of the Lott Patents and their having been infringed by these defendants.

Mr. Isseks: The only thing I am interested in, and which apparently is agreed to by everybody, is that there was a consent decree in one of those cases, in which the licensee and apparently Hartford agreed was a part of the settlement.

Q. Mr. Smith, do you remember, after you made your contract in 1924 with Owens, both your company and Owens instituted suits on your respective patents against various manufacturers of glassware?

A. We did. I forget what Owens did.

Q. Do you not remember, Mr. Smith, a time came when you raised the question with the various Owens representatives about the tremendous expense in connection with the various litigations instituted by your company and their company?

A. I may have, Mr. Isseks.

Q. Do you not remember that a time came in 1927 when you asked Owens to share the expense of the various liti- [fol. 1679] gations which your company was prosecuting; and that you said of course you would share the expense of any litigation they were prosecuting?

A. That might be true. I do not happen to remember.

Q. See if I can refresh your recollection.

Mr. Isseks: I have here—and now I must tell Mr. Middleton he is accurate as to certain documents—not the ones shown before, but the ones I now have, the original documents.

Mr. Middleton: Thank you.

Mr. Isseks: I find out I have them. I now would like to have marked the August 7, 1928, memorandum from Mr. Carter to Mr. Phillips.

The Court: What number?

Mr. Isseks: This is the next number: No. 114. I am reserving Numbers 112 and 113. This is a memorandum dated August 7, 1928, from Mr. Carter to Mr. Phillips; the original document, Exhibit No. 114. And I should like to have marked as Government's Exhibit No. 115 an original letter with original papers attached. The letter is dated August 1, 1928, from the witness to Mr. Carter, marked "Personal", and has attached to it seven pages of what is entitled "Memorandum Invoice" on each page, and each page is dated June 30, 1928. I should like to have it marked all as one exhibit.

* * * * * * *

[fol. 1680] Q. I will take Exhibit 115 first, and I will ask you whether that is your signature on that original document?

A. It is.

Q. Will you please read the letter and the enclosures, and my question is,—after you read it,—whether you sent that letter, which is the original you have there, and enclosures, [fols. 1681-1682] to Mr. Carter on August 1, 1928?

A. Well, I sent the letter. The enclosures, I wouldn't know anything about. I assume they are O.K.

Q. The originals are on the stationery of the Hartford-Empire Company, are they not?

A. Correct.

Q. They are all dated June 30, 1928, and they all have on them: "Memorandum Invoice", addressed to Owens Bottle Company; is that right?

A. Correct.

Q. Those are the documents you enclosed in the letter, aren't they?

A. As far as I know, Mr. Isseks.

Mr. Isseks: I offer them in evidence.

The Witness: I couldn't verify them, of course.

Q. I don't expect you to know the details, but I am asking you whether you sent something with the letter?

A. I did.

Q. You sent invoices with the letter?

A. Correct.

Q. Invoices having the expenses in connection with the various litigations?

A. Correct.

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[fol. 1683] The Court: It may be admitted over objection.

Mr. Middleton: We desire our objection noted.

Mr. Isseks: Before having Exhibit 115 read, I would like to see if I can refresh the witness' recollection with regard to certain conferences that were had resulting in the exchange of correspondence. In that connection I hand the witness Exhibit 114, which is an original document coming from the files of Owens, and which, as far as we know, the witness never saw, but I would like to have him look at it to see if he cannot refresh his recollection as to a conference which he had the previous November with Mr. Carter and other representatives of Owens.

The Court: Is this the one to the attention of Mr. Phillips?

Mr. Isseks: Yes sir, 114.

Q. Have you read it?

A. Yes.

[fol. 1684] Q. Does it refresh your recollection that in November, 1927, some 10 months prior to the date of the memorandum, or some 9 months prior to the date of your letter, which is dated August 1, 1928, Government's Exhibit 115, you, Mr. Williams, C. B. Belknap, W. J. Belknap and Mr. Carter, had a conference with reference to the litigation expenses?

A. I don't remember the conference, Mr. Isseks.

Q. We will go back. Don't you remember a time came when you raised the question?

A. I certainly did raise it.

Q. Who was there when you raised it?

A. I haven't any idea.

Q. Any recollection whatsoever?

A. No.

Q. Absolutely blank?

A. I remember raising the question, because I thought I was entirely logical in the request, namely, if they were receiving a part of our income they should pay part of the expense.

Q. And who did you say that to?

A. That I cannot tell you. I may have written a letter to an officer, or might have said it to their attorney.

* * * * * * *

[fols. 1685-1686] Mr. Isseks: Thank you very much.

I would like to offer in evidence Exhibit 114, which is written by an officer of Owens to another executive of Owens, relating to transactions which are material to the issues in this case.

The Court: There is a stipulation?

* * * * * * *

[fol. 1687] The Court: I agree, Judge Haight, what this communication may say with reference to conversations or conferences that occurred, involving officials of the Hartford concern, would not be evidence as to the truth of what they said or that conferences were held, but I would only admit it in connection with what weight it may have on the question of motive or intent. It is limited to that.

Mr. Isseks: Your Honor will admit it for that limited purpose?

The Court: Yes.

Mr. Isseks: I thank you very much.

I would like to have my associate read Exhibits 114 and 115.

(Thereupon Government Exhibits Nos. 114 and 115 were read.)

Q. Mr. Smith, do you recall a general conference between Owens and Hartford had in New York in November, 1927?

A. I do not.

Q. You just can't place one conference from another?

A. No.

Q. You do recall you raised the question about expenses?

A. I recall that.

Q. Besides the letter?

A. Well, I might have, Mr. Isseks, because it was a rather important factor, I thought.

[fol. 1688] Q. I am sorry; I am not questioning that you raised it; I am trying to get at that you raised it at a conference in addition to the letter.

A. I may have, but I have no remembrance.

Q. I notice Exhibit 115 is sent by you to Mr. Carter marked "Personal"?

A. It so states.

Q. What was the reason for sending Mr. Carter a letter marked "Personal" in connection with litigation expenses to be shared by Owens?

A. I haven't any idea.

Q. You must have had some idea at the time?

A. No, except mail does not always find its way to the proper party or the proper desk.

Q. No other reason?

A. Not that I remember.

Mr. Isseks: I have asked Mr. Wall to see if he can find the original of that letter.

Mr. Wall: I don't find it here. It seems not to be in our stipulation.

Mr. Isseks: I now have carbon copy, original carbon copy, rather, of a letter which has been marked, stipulated as genuine by Owens, from Mr. Carter to the witness, dated September 8, 1928, and also marked "Personal". I would like to have that marked Exhibit 116. (So marked.)

Mr. Williams: Is that covered by this stipulation?

Mr. Isseks: That is what I am told, Mr. Williams; page 13 of the stipulation.

[fol. 1689] Q. I hand you Government's Exhibit 116, which I have described, Mr. Smith, and ask you whether you received the original of that letter in the regular course of business?

A. I don't remember it but I don't deny it.

Mr. Isseks: I offer it in evidence.

The Court: It is admitted, over objection.

(Government Exhibit 116 read by Mr. Kramer, being dated September 8, 1928.)

Mr. Haight: The letter and the bill do not refer to any counsel present in the court room.

The Court: The Court appreciates that, and that this is not a receivership reorganization. Proceed.

Mr. Isseks: At this time, I would like to have marked the original of letter dated January 15, 1929, from one T. L. Champeau to the Owens Bottle Company, attention Mr. Henry W. Carter. It has six pages attached to the letter. I would like to have the documents marked as one exhibit. I would like to have marked at the same time, as Exhibit 118, an original letter dated June 27, 1929, from Mr. Champeau to Owens-Illinois Glass Company, attention of Mr. Carter, with one page attached to it.

Stipulation as to both of these being genuine.

Mr. Middleton: Are they stipulated documents?

Mr. Isseks: Mr. Middleton tells me the stipulation as to genuineness covers original letter of 117 and the first five pages. He is not clear the summary attached thereto is part of the original document. I assume, as to the other document, that his stipulation as genuine holds true, that [fol. 1690] is the letter dated June 27, 1929, and one page attached.

Mr. Middleton: I have no page attached. I have only the letter, a two-page letter.

Q. I would like to show them to the witness, and ask him whether Exhibit 117 is on the stationery of the Hartford-Empire Company?

A. It is.

Q. And are the first five pages thereafter on the stationery of the Hartford-Empire Company?

A. That is correct.

Mr. Isseks: I offer both documents, 117 and 118. I think they are original documents, and their structures, the way they are put together, show they all came from the files of Owens. In the case of Exhibit 118, the document attached, by its contents, shows it was something the writer had received from the Owens people.

Q. Who was Mr. Champeau at that time? He was assistant treasurer, or treasurer, I believe he calls himself?

A. Assistant treasurer.

Q. Is he still with the company?

A. He is.

Q. He is an officer of the company now?

A. Treasurer.

Q. He is a defendant in this case, is he not? I notice in the title-page he is.

A. I don't know. I will take your word for it.

Mr. Middleton: Your Honor, the stipulation which [fol. 1691] Owens made with the Government covering Exhibit 117, includes the letter of transmittal, and apparently includes the first five pages. There has been attached to this exhibit a sixth page of enclosure which we do not have in our files, and which I do not recognize, and which is not covered by stipulation. It is a summary. I don't know whether it is of great importance, if it is a summary of the preceding pages. If it has anything in it not in the preceding pages, I wish to object to it.

Mr. Isseks: I will be willing to drop out the last page. I don't want to physically tear it off the original, but I will make the offer without the last page.

The Court: Very well. Exhibit 117 may be admitted.

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[fols. 1692-1693] The Court: Exhibit 118 will be admitted over objection. If you have a paper attached to it, that is not admitted.

Mr. Isseks: That is right.

* * * * * * *

[fol. 1694] Your Honor, as we recessed I offered Government's Exhibit 119, which I understand Mr. Middleton says is stipulated as genuine, memorandum from Carter to Phillips dated June 27th, 1929.

Mr. Emery: Objection.

Mr. Haight: Now, we haven't seen it.

Mr. Isseks: I think I gave you a copy in the recess, I thought I did. I am sorry.

[fol. 1695] The Court: That may be admitted over objection.

Mr. Isseks: I want to have it read.

Mr. Haight: I suppose you are admitting it with the limitation you mentioned the last time?

The Court: With the limitation mentioned the last time you raised that question.

(Reading Exhibit 119.)

Mr. Isseks: Your Honor, at this time I would like to have marked original letter with eight pages attached dated January 16, 1930, from Mr. Champeau as Assistant-Treasurer of Hartford-Empire Company to Mr. Carter, Exhibit No. 120.

The Court: There are four pages attached.

Mr. Isseks: I have more than that. I have eight pages attached.

The Court: I have four.

Mr. Isseks: Well, we will have to have copies made of the other pages. There must be some mistake in the copy job done by the girls, unless they combined them, Your Honor, and I will have that checked up at some other time. It is stipulated, Your Honor, as entirely genuine by Owens-Illinois Company.

Mr. Emery: Objection.

The Court: Do you offer it?

Mr. Isseks: Yes.

The Court: It may be received over objection.

Mr. Isseks: I would like to have it read.

[fol. 1696] (Reading.)

Q. You will note, Mr. Smith, that in Exhibit 120 Mr. Champeau writes to Mr. Carter that these expenditures are in connection with services, T. R. and B. Feeders?

A. I do.

Q. You note that the itemized expenses are in connection with various litigations, do you not?

A. I haven't looked at it.

Q. Do you notice in the charges in connection with litigation expenses, payments made to lawyers?

A. That seems to be true.

Q. Do you have any recollection of the circumstances under which it was decided to make a charge for services T. R. & B.? For those various litigation expenses?

A. I do not.

Q. You never had any conversation with anybody?

A. Not that I remember.

Q. Now, do you remember, Mr. Smith, the time came when you had a conversation with the executives or with an executive of Owens in regard to dispensing with this 50-50 split of litigation?

A. I don't remember such circumstance.

Q. See if I can refresh your recollection. Remember some time in October, 1932, you had a conversation with Mr. William Levis; do you remember having a conversation with him about that subject matter?

A. Not about that matter, no.

Q. See if I can refresh your recollection. Who is Mr. Levis?

[fol. 1697] A. President of the Owens-Illinois.

Q. And was in October, 1932?

A. Yes.

Q. Don't you remember you had a talk with him at that time in regard to dispensing of this matter of splitting the litigation expenses?

A. I may have had such conversation. I do not remember.

Q. I now hand you a memorandum dated October 20, 1932, which is marked Government's Exhibit 121, carbon copy of an original letter written by Mr. Carter to Mr. Phillips, and has an indication on it, "Carbon copies: Mr. Levis, Mr. Smith, Hartford Accounting". The heading is Division of Litigation Expense with Hartford. I will hand you that document, Mr. Smith, and ask you to read it first.

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[fol. 1698] Q. Mr. Smith, looking at Government's Exhibit 121 for identification, does that refresh your recollection that in October, 1932, you had a conference with Mr. Levis regarding this matter of division of litigation expense between Hartford and Owens?

A. No, it does not.

Q. Do you remember ever having a conference with Mr. Levis about the subject matter?

A. No, I do not. I do not deny that I did but I do not remember the conversation.

Q. That is all right, sir. I want to see if I can refresh your recollection. Don't you remember time came when Mr. Levis said particularly after July 1st, 1932, contract something has got to be done to split these litigation expenses?

A. I do not remember. It might be true. I do not remember it.

Q. You do remember there was a contract made July 1st, 1932, a new contract with Owens?

A. Yes.

Q. And simultaneously and approximately at the same time you made a contract with Hazel-Atlas?

A. Yes.

Q. Don't you remember after that date, July 1st, 1932, you and Mr. Levis had a conference in which he raised the [fol. 1699] question of splitting these expenses?

A. No, sir.

Q. You don't?

A. No sir.

Mr. Isseks: At this time I would like to offer this document for the same purpose the previous documents have been offered, rather limited, namely, for intent and motive and not for contents thereof. We probably will have to wait for that until after Mr. Carter and Mr. Levis are put on.

The Court: It may be admitted over objection as going only to the question of intent.

Mr. Isseks: Thank you very much, Your Honor. I would like to have it read.

(Reading Exhibit 121.)

[fol. 1700] Q. I want to go back over this a few minutes, Mr. Smith. Do you not have any recollection of a time coming when Owens said they would no longer pay one-half the expenses of litigation?

A. No, I don't remember that. I remember there was a change; just when, I could not tell you.

Q. Did you have anything to do with bringing about that change?

A. I may have discussed it, but I don't remember discussing it.

Q. Is there anything wrong with your memory, ordinarily?

A. A great many times; I think there is something wrong most of the time.

Q. Your memory is not of the best, do I understand by that?

A. I have not a photographic type of mind.

Q. You do not?

A. No, sir.

Q. You do not recall things that happened more than a reasonable period ago?

A. Not very easily.

Q. That is true generally, not only with regard to the issues in this lawsuit, but with regard to most matters?

A. Quite true.

Q. You do not dispute that you had a conference with Mr. Levis?

A. No, I do not dispute it.

Q. You don't remember it at all?

A. I don't remember taking that statement up with Mr. Levis.

Q. You do remember that a time came when this 50-50 [fol. 1701] split was stopped?

A. I remember there was some change; I don't remember when that was.

Q. You don't remember what the change was?

A. No, sir.

Q. Mention is made here in some of these letters of Hazel-Atlas: You remember what Hazel-Atlas is and what it does?

A. I do.

Q. What is the Hazel-Atlas Corporation?

A. It is a large manufacturer of glassware.

Q. I should like to go back to 1924, notwithstanding in memory, and see if I can get some recollection from you in 1924. In the early part of 1924 Hazel-Atlas was in the glass business, was it not?

A. Oh, yes.

Q. Who was the active head of the company at that time?

A. I don't know.

Q. Mr. Brady, was he not?

A. He was at one time, until he died; I don't remember the time.

Q. Do you remember the time when Mr. Brady stopped being the head, and Mr. McNash became head?

A. I remember that that occurred.

Q. You don't remember the date?

A. No, sir.

Q. Do you not -member that the Hazel-Atlas Company was what you have on various occasions designated a pirate?

A. Yes, we thought so.

[fol. 1702] Q. Your best recollection, what was Hazel-Atlas using back in 1924 in connection with the manufacture of glassware by it on automatic machinery, if you know?

A. They had a feeder and some of their own machines, I think.

Q. Did they have their own feeder, as far as you knew?

A. I think so.

Q. Do you remember a time came after you made your contract with Owens when you were negotiating with Hazel-Atlas?

A. Some of the letters this morning stated that we did try to persuade them to take a license, and they refused.

Q. The Owens contract, as I recall, is dated April 9, 1924.

A. Yes, somewhere in there.

Q. Do you not remember shortly thereafter that Mr. Brady, of Hazel-Atlas in conversations with you, said they would like to negotiate with you, provided you would show them a copy of the Owens contract?

A. No, sir.

Q. Do you not remember that?

A. No, sir.

Q. See if I can refresh your recollection. I show you a diary entry for June 16, 1924, the last item on the page. See if that refreshes your recollection.

A. That does not refresh my recollection.

Q. It does not?

A. No, sir.

Q. I should like to show you another piece of paper. Do you notice it refers to you approving a letter he wrote [fol. 1703] to Mr. Baker on that day?

A. It so states.

Q. I show you a photostat of a copy of a letter which has been stipulated as genuine by Hartford-Empire, a carbon copy, dated June 16, 1924, from Mr. Knox Smith to Mr. Baker, which is marked Government's Exhibit No. 122? I ask you, first of all, whether or not that is a letter you approved Mr. Knox Smith's writing to Mr. Baker, Treasurer of the Owens Company?

(Witness reads the letter.)

Q. Have you read the letter?

A. I have.

Q. It does refresh your recollection, looking at the letter, Mr. Knox Smith's diary entry of June 16th, 1924, first, that you received a telegram from Mr. Baker?

A. This letter does not refresh my memory.

Q. Do you remember receiving a telegram from Mr. Baker about a request made by Mr. Brady?

A. No, I don't remember that. I do not deny that we did not receive it.

Q. Do you remember going over a proposed reply to Mr. Baker's telegram, with Mr. Knox Smith?

A. No, I do not, Mr. Isseks.

Q. Do you remember having a conversation with Mr. Knox Smith in which you took the position that you would not permit Hazel-Atlas or any other outsider to see the Owens contract because of the provisions therein in respect to the division of income?

A. No, I don't remember that.

[fol. 1704] Q. Do you not remember taking the position after the Owens contract was signed that no outsider should see it because of the provision in the contract with regard to the division of income?

A. No, I do not. I think in general that I was opposed to a general publication of all of the contract. At least I always did, when asked, admit that the Owens Company were receiving a substantial yearly amount from us for license under their patent rights.

Q. Did you in fact ever show Hazel-Atlas the Owens contract until on or about July, 1932?

A. I don't remember that we did, or I don't remember that we did not.

Q. Do you not remember it was the company's policy not to show it to anybody because of the provisions in it with regard to division of income?

A. I don't know as to company policy. I think I stated quite honestly to you a minute ago what my feeling was.

Q. Do you not remember also another reason for refusing to show the contract to either Hazel-Atlas or any other outsider was because Owens had forty units on which it got certain particular rights?

A. I do not happen to remember that.

Q. Do you not remember also you were reluctant to show the contract to anybody, Hazel-Atlas or any other outsider, because of the provisions with regard to the joint purchase of rights?

A. No, I would not remember that.

[fols. 1705-1707] Q. Do you not remember also another reason for reluctance on the part of Hartford to show the contract to anybody else was because of the provision between Owens and Hartford for a division of recoveries, if any, in any litigation?

A. No, I don't remember that either.

Q. My next question is whether you saw that letter before it was sent out by Mr. Knox Smith; and in that connection I direct your attention to the diary entry, again, which states that you—rather the diary entry indicates that you approved the letter? I direct your attention to the date of both documents?

A. One shows the matter was discussed; but I do not possibly remember whether I saw that.

Q. Does not the diary entry go further and show that you approved the letter?

A. I beg your pardon. I take that back.

Q. It does say that?

A. Yes, sir.

Q. Do you not remember that you did approve the letter?

A. I do not remember it. I do not deny it.

Mr. Isseks: I offer the letter in evidence, Your Honor.

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[fols. 1708-1709] Mr. Isseks: It is only offered, as Your Honor knows, from other documents, to show the state of mind of Hartford-Empire, through its general counsel, Mr. Herbert Knox Smith.

The Court: The Court will admit it only as going to the question of motive and intent, and not as proof of the meeting or any conversation that occurred at the meeting, between Mr. Blair and Mr. Brady.

Mr. Isseks: That is right, Your Honor. That is the only reason it is offered, as Your Honor indicated. Is it admitted for that purpose?

The Court: Yes.

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[fol. 1710] Mr. Apsey: The Government offers in evidence as Exhibit 81, a photostatic copy of a license stipulated as genuine by Hartford-Empire Company, of United States Patent 1,260,428 from Miller Glass Engineering Company to Hartford-Empire Company, executed under date of July 30, 1925.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 82, a photostatic copy stipulated as genuine by Hartford-Empire Company, of a contract executed by William J. Miller under date of July 30, 1925, transferring to Hartford-Empire Company certain feeder patents, application and inventions and entitled, "Sale of Patent Rights".

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #83, a copy stipulated as genuine by Hartford-Empire Company, of an "Assignment of Invention" executed under date of July 30, 1925, by William J. Miller and Edward A. Lawrence.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 84, a photostatic copy stipulated as genuine by Hartford-Empire Company, of a "Release to Hartford-Empire Company", executed July 30, 1925, by William J. Miller.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #85, a photostatic copy from the files of Hartford-Empire Company, another copy of which was stipulated as [fol. 1711] genuine by Owens-Illinois Glass Company, of a "Release" to Owens-Illinois Glass Company, executed under date of July 30, 1925, by William J. Miller.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #86, a photostatic copy from the files of Hartford-Empire Company, another copy of which was stipulated as genuine by Owens-Illinois Glass Company, of a "Limitation of Recovery" executed jointly by Hartford-Empire Company and the Owens Bottle Company under date of July —, 1925.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence Exhibit #87, a photostatic copy furnished by Hartford-Empire Company of a contract of "Sale of Former Patent Rights" executed under date of July 30, 1925, by W. J. Miller to Victor J. Greene.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence Exhibit 88, a photostatic copy stipulated as genuine by the Hartford-Empire Company, of a "Bill of Sale" executed under date of July 30, 1925, by William J. Miller to Victor J. Greene.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence Exhibit 89, a photostatic copy stipulated as genuine by Hartford-Empire Company, of an instrument entitled "Assump- [fol. 1712] tion of Notes" executed by Hartford-Empire Company and Victor J. Greene under date of July 30, 1925.

Mr. Emery: Objection.

Mr. Apsey: The next series of contracts to be offered by the Government are concerned with the transactions by which Hartford and Owens acquired the Tucker, Reeves and Beatty patents, patent applications and rights under licenses.

The Government next offers in evidence as Exhibit #90, a typewritten copy furnished by Owens-Illinois Glass Company of a license executed by Tucker, Reeves and Beatty under date of August 14, 1925, to the Owens Bottle Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence, Exhibit #91, a photostatic copy stamped as coming from the vaults of Hartford-Empire Company, of an "Assignment of Patent Application" Tucker, Reeves and Beatty to Hartford-Empire Company, executed under date of August 14, 1925.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 92, a typewritten copy coming from the files of Owens-Illinois Glass Company of a "Release" from Owens and Hartford to Tucker, Reeves and Beatty, executed under date of August 14, 1925, which was stipulated as genuine by Owens-Illinois Glass Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 93 a typewritten copy from the files of Owens-

[fol. 1713] Illinois Glass Company of a "Release Tucker, Reeves and Beatty to the Owens Bottle Company", executed under date of August 14, 1925, which was stipulated as genuine by Owens-Illinois Glass Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #94, a photostatic copy stipulated as genuine by Owens-Illinois Glass Company, of a "Release, Tucker, Reeves and Beatty, to Hartford-Empire Company", executed under date of August 14, 1925.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 95, a photostatic copy stipulated as genuine by Hartford-Empire Company, of an instrument entitled, "Waiver and Agreement", executed under date of August 14, 1925, between Owens Bottle Company, Hartford-Empire Company and Federal Glass Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #96, a photostatic copy stipulated as genuine by Owens-Illinois Glass Company, of an "Indemnity Agreement", executed under date of August 14, 1925, and running from Owens Bottle Company and Hartford-Empire Company to Tucker, Reeves and Beatty.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #97, a typewritten copy agreed by Owens-Illinois [fol. 1714] Glass Company to be correct, of an "Assignment of License from Oliver M. Tucker, William A. Reeves and James M. Beatty to Charles B. Belknap", executed under date of August 14, 1925.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #98 a photostatic copy stamped as coming from the vaults of the Hartford-Empire Company, of an instrument entitled "Loan and Security Therefor", executed under date of August 14, 1925, between Hartford-Empire Company and Owens Bottle Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #99, a photostatic copy stipulated as genuine by Hartford-Empire Company, of an "Option", executed under date of August 14, 1925, between Charles B. Belknap and Feeder Patents Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 100, a photostatic copy of an agreement stamped as coming from the vaults of the Hartford-Empire Company, entitled "Agreement as to Current License Fees", executed under date of August 14, 1925, by C. B. Belknap and Tucker, Reeves and Beatty.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 101, a photostatic copy stipulated as genuine by Hartford-Empire Company, of an "Agreement Division [fol. 1715] of Capstan Royalties and Fixing Federal Royalties", executed under date of August 14, 1925, by Federal Glass Company and Charles B. Belknap.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit #102, a photostatic copy stamped as coming from the vaults of Hartford-Empire Company, of an "Agreement on Tucker and Reeves Machines for Foreign Use", executed under date of August 14, 1925, by Owens Bottle Company, Hartford-Empire Company and Tucker, Reeves and Beatty.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 103, a photostatic copy stipulated as genuine by Hartford-Empire Company, of an "Assignment of Royalties from Five Licensees, etc.", executed under date of December 31, 1925, by Owens Bottle Company and Hartford-Empire Company.

Mr. Emery: Objection.

[fol. 1716] Mr. Apsey: The Government next offers in evidence as Government's Exhibit 104, a photostatic copy from the files of Hartford Empire Company of "Minutes of meeting of Directors of Feeder Patents Company", dated December 30, 1925, and signed by Herbert Knox Smith, as secretary.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Government's Exhibit 105, a photostatic copy stipulated as genuine by Hartford Empire Company, of an agreement executed under date of December 31, 1925, between Charles B. Belknap, Feeder Patent Company, Hartford-Empire Company and Owens Bottle Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 106, a photostatic copy, stipulated as genuine, by Hartford-Empire Company, of an assignment executed under date of December 31, 1925, by Charles B. Belknap to Feeder Patents Company.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 107, a photostatic copy, stipulated as genuine by Hartford-Empire Company, of an assignment executed under date of December 31, 1925, by Feeder Patents Company, to Hartford-Empire Company.

Mr. Emery: Objection.

Mr. Apsey: The Government offers in evidence as Exhibit 112 a photostatic copy, stamped as coming from the [fols. 1717-1721] files of Hartford-Empire Company, of an agreement to sell patent rights, between Rankin Automatic Glass Feeder Company, Ltd., and Hartford-Empire Company, executed under date of October 18, 1928, together with letters of transmittal and certificate of authority attached.

Mr. Emery: Objection.

Mr. Apsey: The Government next offers in evidence as Exhibit 113 a photostatic copy of an assignment of United States patent rights to Hartford-Empire Company, executed under date November 9, 1928, by Rankin Automatic Glass Feeder Company, Ltd., Carl Henry Rankin, W. L. Pratt and C. J. P. Pratt. The copy was received from the files of Hartford-Empire Company and bears the stamp "Received William H. Honiss, November 28, 1928", and a superscription that it was recorded in U. S. Patent Office December 11, 1928.

Mr. Emery: Objection.

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[fol. 1722] Mr. Isseks: The other thing, Your Honor, is that after the court session last evening, Mr. Apsey had the Clerk mark Government's Exhibit Numbers 81 to 107, which consist of formal documents with regard to the Miller, and Tucker, Reeves & Beatty transactions; and Exhibits No. 112 and 113. I ask Your Honor to admit those documents in evidence. No ruling is shown in the minutes by Your Honor.

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[fol. 1723] The Court: They may be admitted, over objection.

Mr. Isseks: Numbers 112 and 113 are documents stipulated by Hartford as genuine with regard to the Rankin transaction. We offer those in evidence, Your Honor.

The Court: They may be admitted, over objection.

Mr. Fuller: Does the record show a general objection to those documents?

Q. Mr. Smith, we were talking yesterday about the Hazel-Atlas Corporation. In 1924 the Hazel-Atlas Corporation, you testified yesterday, was a manufacturer of glassware?

A. That is correct.

Q. At that time did you consider Hazel-Atlas one of the large manufacturers of glassware?

A. I think so.

Q. At that time in 1924 who was, as you understood it, the largest manufacturer of glassware in the United States?

A. The Owens Company.

Q. Before the Owens combined with the Illinois Company?

A. I think so.

Q. Who was the second largest company at that time, as you understood it?

A. I think probably Hazel was, but I am not sure.

Q. Let us take today: today the largest company is——

A. Owens-Illinois.

Q. The second largest company today is what?

[fol. 1724] A. Hazel-Atlas.

Q. The third largest company?

A. I would not know: either Ball Brothers, Anchor-Hocking, Thatcher, or Knox. They are all large companies.

Q. At any event, at that time and today, Hazel-Atlas was the second largest company in the industry?

A. I have no facts to prove it, Mr. Isseks. My impression is so.

Q. By impression, you mean your understanding?

A. I would say that they were. Whether they actually were or not, I cannot tell you because I have no statistics.

Mr. Isseks: I am trying to get your state of mind; that is all.

Q. Was there a relationship, as you understood it, in 1924, between Owens and Hazel-Atlas?

A. Yes, sir.

Q. What was that relationship, as you understood it?

A. Well, I think Hazel-Atlas Glass Company had certain suction rights. They were a licensee of the Owens Company.

Q. Was there not also another relationship? Did not Owens at that time have a stock interest in Hazel-Atlas?

A. I cannot tell you as to that.

Q. I want to know what you understood, only.

A. I just don't know; they may have or may not, at that time; but I would not know.

Q. Between 1924 and 1932, did you not know that during [fol. 1725] all or part of that period Owens had members, had representatives, rather, on the Board of Directors of Hazel-Atlas?

Mr. Middleton: Objection to the question. It assumes something to be a fact which is untrue. It is not a fair question.

The Court: He may answer it, if he knows.

A. I don't know. I know that at one time, at least I was advised at one time Owens Company had stock in the Hazel-Atlas Glass Company; but just when they had it, or how long they had it, I could not tell you.

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[fol. 1726] Q. You knew, did you not, during this period of time, or part of it, between 1924 and 1932, that Owens had officers who were also directors of Hazel-Atlas,—one or two?

A. I think, one.

Q. Back in 1925 or 1926, after you bought out Miller—you remember that, do you not?

A. I remember buying out Miller, yes.

Q. I am talking about William Miller, and not Ed. Miller.

A. That is right.

Q. Mr. Miller sold his feeders, did he not, as distinguished from licensing them?

A. A number of them were sold.

Q. There were a group of manufacturers of glassware throughout the country known by your company and by the Owens Company as the Miller users, is that not right?

A. That is correct.

Q. After you bought out Miller, those gentlemen organized an association, did they not, as far as you knew?

A. They had some kind of agreement; I think they used to refer to it as the Miller Defense Association.

Q. You knew about that, of course?

A. Yes, sir.

Q. They got together for the purpose of fighting your company?

[fol. 1727] A. That is correct.

Q. You knew, did you not, that one of the people behind them was the Hazel-Atlas Corporation?

A. No, I could not say that.

Q. Did you not know that Hazel-Atlas was supporting those people, and urging them, and egging them on?

A. No. I think the testimony yesterday, or some paper read, stated that we believed that the Hazel-Atlas Glass Company would help Miller,—W. J. Miller,—in any suit.

Q. Before the deal: that memorandum was in 1924, as I recall it, and the deal with the Miller people was in 1925; is that not right?

A. Yes, sir.

Q. The exhibit, dated June 16, 1924: that is the one to which you are referring—but I am talking about what happened after you bought out Miller. Do you remember that?

A. That was after; that is correct.

Q. Do you not remember at that time and for a period thereafter you knew—by you I mean your company of which you were the executive head—that Hazel-Atlas we-helping that group out?

A. I don't know it for a fact. I would not be at all surprised if they did. But what they did or how they helped them, I don't remember.

Q. Of course Hazel-Atlas was not a Miller user so far as you knew?

[fol. 1728] A. They claimed they had their own feeder.

Q. Who was Mr. Heintzelman?

A. Mr. Heintzelman was president of the Monongah Glass Company.

Q. Also a director of your company?

A. He was.

Q. A director in—I think we had an exhibit yesterday showed he was a director in 1925.

Mr. Wall: I think not.

Mr. Isseks: If I am wrong, I am very sorry.

Mr. Wall: Proceed. Maybe you are right.

Mr. Isseks: Mr. Wall has very kindly given me a tabulation here which shows that Mr. Heintzelman was a director in 1922, 1923, 1924, 1925, 1926, but not in 1927.

Mr. Wall: Your statement was therefore correct.

Q. By stipulation, Mr. Heintzelman was a director from 1922 to 1926, inclusive?

A. Yes, sir.

Q. He was also at that time president of the Monongah Glass Company?

A. That is correct.

Q. Monongah was a glass company down in West Virginia?

A. It was in Fairmont, West Virginia.

Q. That company had a stock interest in your company, did it not?

A. It did.

Q. And therefore you considered Mr. Heintzelman through his company as a large stockholder of your company?

[fol. 1729] A. They did own a large block of our stock.

Mr. Isseks: At this time, Your Honor, I should like to show the witness an original letter, or rather a photostat of an original letter, dated June 19, 1924, from Mr. Heintzelman to the witness, marked "Personal", and marked now Government's Exhibit No. 123.

Q. I ask you, first, Mr. Smith, whether you are familiar with Mr. Heintzelman's handwriting?

A. I am.

Q. I will ask you whether that is his signature on the letter?

A. It is.

Q. And his handwriting on the footnote?

A. I think so.

Mr. Isseks: The document, Your Honor, has been stipulated as genuine by Hartford-Empire Company.

Q. Mr. Smith, I ask you to read the document, and ask you whether you received it in the regular course of business?

Mr. Middleton: May we have the date of this document?

Mr. Isseks: June 19th, 1924.

Mr. Middleton: What is it about? Is it a letter or something?

Mr. Isseks: It is a letter from Mr. Heintzelman to Mr. Smith, the witness.

Mr. Middleton: Thank you.

Q. Have you read it, sir?

[fols. 1730-1731] A. I have.

Q. You received it in the regular course of business?

A. I have no doubt I received it.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, over objection.

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[fol. 1732] Q. Mr. Smith, did you approve Mr. Heintzelman's seeing Mr. Brady?

A. Did I approve?

Q. Yes. He says here, "As soon as I get back I should like to get in touch with Mr. Brady, if it meets with your approval"?

A. I just don't remember. I may have written him or I may not.

Q. Did you yourself see Mr. Brady?

A. No, sir.

Q. You were interested, though, were you not, in trying to make some arrangement with the Hazel-Atlas people?

A. We were interested that Hazel-Atlas take a license.

Q. Your associate in connection with this April 9, 1924, contract, namely, Owens Bottle Company, was also interested, was it not?

A. I think so.

Q. You conferred with the executives with regard to working out something with Hazel, did you not?

[fol. 1733] A. Possibly so.

Q. Do you not remember having conferences at various times?

A. No, but I think I undoubtedly did.

Q. I should like to get your recollection. Do you not remember talking with various Owens executives at various times about getting Hazel-Atlas into the fold?

A. No, Mr. Isseks, can we clear this memory thing? Of course there are certain things I remember about business life and private life, and so on; but I was in many,

many conferences, year in and year out, hundreds, thousands, over this period of time we are talking about. I cannot remember just what was said at all those conferences, who said what, or all the subjects that were taken up. I am not able to. I did not mean to imply that I did not have a memory, yesterday, no memory; but if I say to you I had discussions with these gentlemen about certain subjects I cannot tell you when or how many times I talked about these matters, or just with whom I did talk.

Q. Are you through, sir?

A. Yes, sir.

Q. My question is: Do you remember having conversations with the executives of Owens with regard to efforts they should make, and you were making, or you should make, to get Hazel-Atlas in as a licensee?

A. I undoubtedly did have.

[fol. 1734] Q. I must ask you for a better answer. I want your best recollection; not that you did have. Did you have such a conference? I am asking a general question; not a specific conference on a particular date or with a particular person?

A. Yes, I think I had such conferences.

Q. What is your best recollection of the names of the executives of Owens that you conferred with; what people at Owens?

A. I naturally would confer with Mr. Boshart.

Q. In the early days when he was president?

A. Yes, sir.

Q. Who else?

A. Perhaps Mr. Baker; possibly Mr. Carter.

Q. Later on when Mr. Boshart left as president, you conferred with whom?

A. Mr. Levis.

Q. Mr. William Levis? There are a number of Levises.

A. That is correct.

Q. Who else?

A. Sometimes—you mean on various matters or this particular matter?

Q. I am talking about Hazel-Atlas?

A. I would not know just who.

Q. Mr. Williams was in some of the conferences, was he not?

A. He might have been, but I don't remember.

Q. Do you remember that in the very beginning, you had some correspondence with Mr. McNerney, assistant treas- [fol. 1735] urer and assistant secretary, according to the letter you wrote August 4, 1924; do you remember corresponding with him?

A. I know I did.

Q. You know who he is?

A. Yes, sir.

Q. He was an officer of the Owens?

A. Of the Owens Company.

Mr. Isseks: At this time, Your Honor, I should like to have marked as Government's Exhibit 124, a photostatic copy of a letter, purporting to have been written by the witness, August 4, 1924, to Mr. J. H. McNerney, assistant treasurer and assistant secretary of the Owens Bottle Company. I ask Mr. Smith to read it.

Q. Tell us whether you wrote that letter.

(Witness reads the letter.)

Q. You have read it, sir?

A. I have.

Q. Did you send that letter to Mr. McNerney in the regular course of business?

A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 124 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, do you remember that in 1925, the early part of 1925, at a conference with various Owens execu- [fol. 1736] tives, the suggestion was made that Hazel-Atlas be offered an option to come in as a licensee; give them an option for two years?

A. No, I don't remember it. I do not deny it.

Q. Do you remember that the suggestion was made at this conference that during the option period, they would pay regular royalties, and they would receive a payment back from Owens other than a fixed sum annually?

A. No, sir.

[fol. 1737] (10:45 a. m.)

Q. Do you remember that one of these matters discussed was that during the option period Hazel-Atlas would refuse to give any cooperation to the Miller users in the various litigations?

A. No, I don't.

Q. You don't remember that?

A. No.

Q. See if I can refresh your recollection. I show you Mr. Knox Smith's diary for April 29, 1925, which runs over a few pages,—for convenience of counsel I have had a typewritten copy made which will be easier for the witness to read,—and is an exact copy of the diary entry for that date. (Handing copy to counsel.) Look at that diary entry and see if it refreshes your recollection, Mr. Smith. (After witness examines same.) The question is whether that diary entry refreshes your recollection that in April, 1925, you attended a conference with Messrs. C. B. and W. J. Belknap Carter, on behalf of Owens, yourself part of of the time,—you were in part of the conference,—Knox Smith, Mr. Peiler and Col. Brown, at which the question of offering an option to Hazel-Atlas was discussed?

A. No, it does not. I don't deny it. I do remember that sometime we had some plan, what it was I cannot tell you, to bring about a situation so Hazel-Atlas would have a trial period.

Q. See if I can help you out. I now show you Government Exhibit 79, which you identified yesterday as a memo- [fol. 1738] randum of a conference written by you a month later, a month after the conference referred to in the diary entry, and I direct your attention to the first paragraph, and see if that does not refresh your recollection that you, first, did discuss with the Owens people the giving of an option to Hazel-Atlas Company, and, secondly, that Hazel-Atlas turned down the option?

A. Mr. Isseks, I have testified that we were very anxious to get the Hazel-Atlas Glass Company as a licensee. I remember that sometime, I couldn't have told you whether it was '25 or '26, I remember that there was a discussion and there may have been a proposal sent them based on a two-year proposal.

Q. Don't you remember that that proposal involved permitting Hazel-Atlas to get a rebate of any royalties other than $75,000.00 a year during the two-year period?

A. I don't remember that, but if you have a copy of that proposal——

Q. Well, I have got the diary entry.

A. I just don't remember.

Q. I mean all I have now is the diary entry. I may have more before the case is over.

Mr. Wall: I don't say that I will.

Q. Does that refresh your recollection?

A. No.

Q. You do remember there was an option; when you looked at your memorandum you wrote, Exhibit 79, which [fol. 1739] was not a diary entry, the first paragraph says, "The Hazel-Atlas Company has flatly refused to enter into any license agreement or pay us any option fee whatever for the next few years until the patent situation is further developed". You wrote that?

A. I did.

Q. Somebody told you that?

A. What?

Q. Somebody told you what you wrote, or you knew it in some way, you knew about the option?

A. Oh, yes, these matters were discussed, I don't deny that.

Q. You found that out from the memorandum you wrote at the conference with Mr. Boshart and W. J. Belknap on May 28, 1925?

A. I can't put it down to that, but I don't deny.

Q. Exhibit 79 is a part of a memorandum of a conference, isn't it?—look at the top of it, please.

A. Yes.

Q. I am trying to find out whether somebody from Hazel-Atlas told it to you or you got it from the Owens people; that is what I am trying to find out.

A. That I couldn't tell you.

Q. Did you negotiate with Mr. Brady?

A. No.

Q. Anybody from Hazel-Atlas?

A. In 1925?

Q. Yes.

A. I couldn't tell you.

Q. Did you negotiate with counsel for Hazel-Atlas, Mr. Philbin, in 1925?

[fol. 1740] A. That I cannot tell you. I don't remember.

Q. Do you remember in 1927 you had a licensee called Hocking Glass Company?

A. Yes.

Q. And the executive head of that company was whom?

A. Mr. Collins.

Q. At one time Mr. Collins became a director of your company, did he not?

A. He did.

Mr. Isseks: Your Honor, Mr. Wall has been kind enough to give me a schedule which shows that in the year 1927—and I understand from colloquies the board is elected on the first Monday of February of the year—apparently in February, 1927, Mr. Collins was a director of Hartford, and according to the schedule he was a director in 1928, '29, '30, '31, '32, '33, '34, '35, '36 and '37. Then for the year 1938 it shows, "Same as '37, omitting Isaac J. Collins", so I assume he stopped being a director in 1938. That is, he was a director at least from '27 to '37, according to that schedule.

Q. That is true, is it not, that according to that schedule, Mr. Collins was a director of your company from '27 to '37?

A. Correct.

Q. So that on August 11, 1927, he was a director of your company?

A. Correct.

Mr. Isseks: At this time I would like to have marked as Government Exhibit 125, a photostatic copy of an original [fol. 1741] letter purportedly written by Herbert Knox Smith to Mr. Collins. It has been stipulated by counsel for Anchor-Hocking as a photostat of the original document in their files. It is dated August 11, 1927, from Mr. Knox Smith to Mr. Collins.

Q. Mr. Smith, I ask you whether the signature on that document is the signature of Herbert Knox Smith.

A. It is.

Mr. Isseks: Your Honor, I offer the photostat of the original letter in evidence.

Mr. Middleton: I object.

The Court: It may be admitted over objection.

(Exhibit read by Mr. McCracken.)

Q. You heard my associate read that letter, did you not?

A. I did.

Q. Do you remember in 1927 you were still hopeful of getting Hazel-Atlas in as a licensee?

A. We were always hopeful of that.

Q. In other words, from 1924 down to the day you made the contract in 1932, you made every effort you could to get Hazel in as a licensee?

A. I think so.

Q. That is your best recollection?

A. Yes.

Q. You have already testified Mr. Beatty was one of the members of what we all understood to be a partnership——

A. Tucker, Reeves and Beatty.

Q. Tucker, Reeves and Beatty. He was also, you testi-[fol. 1742] fied, I believe, the executive head of the Federal Glass Company?

A. That is correct.

Q. You have from time to time corresponded with Mr. Beatty?

A. That is correct.

Mr. Isseks: I would like to have marked at this time as Government Exhibit 126, a photostatic copy of the carbon copy of a letter written by the witness under date of September 29, 1927, to Mr. J. M. Beatty, care of Federal Glass Company, and the copy that is being offered has on the top, "Copy for Mr. Collins", and the copy we offer has been stipulated by Anchor-Hocking as coming from their files.

Q. Now, Mr. Smith, I ask you, by reading it and looking at the end, which has "F. G. S.-A", then a line for signature, whether you wrote that letter to Mr. Beatty?

A. (After examining same.) I did.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Fuller: We make the general objection as to immateriality, incompetency and irrelevancy.

The Court: It may be admitted over objection.

(Exhibit 126 read by Mr. Lewis.)

Mr. Day: If the Court please, I desire to make a special objection to the last part of the second paragraph, which says: "I understand that the matter was again discussed privately between these three parties at the Glass Container Association meeting at Montreal a couple of months ago, at which meeting McNash practically said, to all intents [fol. 1743] and purposes, "Nothing doing until after the patent suit", which is not only hearsay but it is almost triple or quadruple hearsay.

The Court: I think counsel understands the exhibit is admitted, not for the purpose of proof of the truth of what some man says, or even that the three parties had a conference at this Association meeting, but it goes to the question of intent and motive.

Mr. Day: As between those who were parties to the letter, the one who wrote the letter and the one to whom the letter was addressed?

The Court: As to them at this time, yes. It may have its application later to other defendants.

Mr. Day: Very well.

Mr. Isseks: Your Honor, of course this is offered as to the truth of what the witness says, when he says something himself, not what somebody else told him.

The Court: What he says, yes.

Mr. Day: All right.

Q. Now, Mr. Smith, you remember that after September, 1927, there were further conferences had by Hartford people in an effort to work something out with Hazel-Atlas?

A. I think there were.

Q. Now, in this connection I want to see if I can refresh your recollection. Remember during this period you were having various conferences with the Owens people with regard to the Headley and Thompson patents?

[fol. 1744] A. We did.

Q. That is a matter that I shall go into later. That related to forming machines, did it not?

A. That is right.

Q. At that time applications were pending, the patents weren't issued?

A. That is correct.

Q. The Headley and Thompson patents were owned by Whitall and Tatum?

A. Whitall-Tatum Company, they are glass manufacturers.

Q. Do you remember in connection with the conferences you were having with Owens with regard to that Headley-Thompson application there was some discussion by Owens about using the negotiations they were having with you with respect to this matter as a means for working something out with Hazel-Atlas?

A. I don't remember. It might be true, Mr. Isseks.

Q. I would like to show you the December 14, 1927, diary entry of Mr. Knox Smith, and see if that will refresh your recollection. For convenience I have again had it transcribed by a stenographer,—makes it easier to read. It runs over several pages. This being shown to the witness subject to any connection, I am offering it solely to refresh his recollection. Will you look at that diary entry and see whether that refreshes your recollection?

A. No, Mr. Isseks, it does not.

Q. Does not refresh your recollection at all?

[fol. 1745] A. No.

Q. You do remember there were conferences relating to the Whitall-Tatum matter with the Owens Company?

A. Yes, there were.

Q. Do you have any recollection of a conference at which there were present yourself, Mr. Knox Smith, C. B. Belknap, and Mr. Carter, with regard to both the Whitall-Tatum and Hedley-Thompson matter?

A. No; and I would not deny it.

Q. Now I would like to go back a little bit. You remember there was a lawsuit brought by Hartford against Hazel-Atlas in Pittsburgh?

A. Yes.

Q. You were suing Hazel-Atlas on a patent you had?

A. On a Peiler plunger patent.

Q. That is right. That is the one.

A. Yes.

Q. And Hazel-Atlas defended?

A. Correct.

Q. You remember the District Court, I think Judge Gibson, decided the case against Hartford Company and in favor of Hazel-Atlas?

A. Yes.

Q. That was sometime in 1930, was it not,—whatever the record shows?

A. Around there.

Q. You remember as soon as that happened you started having trouble with your licensees?

[fol. 1746] A. Well, I don't remember any particular one at that time. Of course they had heard we had lost the suit, and asked if that was so, what protection were we giving them?

Q. Don't you remember some of the licensees said they would not pay royalties pending the outcome of the litigation?

A. I think that might be true.

Q. I will see if I can refresh your recollection. Do you remember Mr. Stewart, Isaac Stewart?

A. Yes.

Q. Who was he?

A. One time he was connected with Kearns-Gorsuch Bottle Company.

Q. I am thinking of the Stewart connected with Capstan.

A. Oh, another one. Yes, there was a Mr. Stewart, head of the Capstan Glass Company.

Q. Named Isaac Stewart?

A. Isaac Stewart.

Q. Don't you remember Isaac Stewart of Capstan Company took the position, pending the outcome of that suit, since Hartford lost it, they would hold up the payment of royalties, and you talked about it?

A. I wouldn't at all be surprised if he did.

Q. I want your best recollection.

A. I think he probably did.

The Court: You may suspend at this time for 15 minutes.

(15-Minute Recess.)

Q. Don't you remember, Mr. Smith, that not only did Mr. Stewart of Capstan make the point, after the District [fol. 1747] Court decision, that he would not pay royalties pending the outcome of any appeal, but that Mr. Beatty took the same position?

A. No; I remember Mr. Stewart made several threats but I have forgotten about Mr. Beatty, if he did.

Q. Anybody else take that position?

A. No, I think the question probably came up a number of times with various licensees.

Q. Do you remember at that time, after the decision of the District Court, you and Owens felt that an effort should be made to work out a settlement with Hazel-Atlas?

A. No, I don't remember.

Q. Don't you remember that the suggestion was made that if Hazel-Atlas came in and became a licensee a lot of the people that were on the outside would also come in?

A. No, I don't remember that.

Q. Of course you heard that suggestion made later on, didn't you?

A. No, I don't know about any suggestion.

Q. Don't you remember there was a conversation at some time—I am referring now to specifically after the District Court's decision but at some time—between Owens and Hartford, that if Hazel became a licensee the people that were still outside would also come in?

A. Well, I think that, as a practical matter, the mere fact at any time one big company became a licensee, others who had not been licensees would probably consider the matter.

Q. Don't you remember there was a conversation between you and the Owens executives that once you got Hazel in [fol. 1748] it would be easier to get the other people in?

A. There might have been, Mr. Isseks.

Q. Now, I would like to ask you who the other outsiders were at that time in addition to Hazel-Atlas?

Mr. Wall: At what time?

Mr. Isseks: In 1930.

A. Well, there were a great many manufacturers at that time who were infringing our rights and who were not our licensees.

Q. They took the position they were not infringing your rights, is that right.

A. Yes.

Q. You took the position they were and they took the position they were not?

A. Correct.

Q. And Hazel-Atlas, of course, took the position they were not?

A. That is right.

Q. Let's, for the record, find out who the other people were. You said a "great number." In addition to Hazel-Atlas there was Knox?

A. Correct.

Q. Knox is a very large manufacturer of glassware?

A. Substantial.

Q. And there was Universal, was there not?

A. Yes.

Q. And Maywood?

A. Yes.

Q. Lamb?

A. Yes.

[fol. 1749] Q. What is this man Rau, his company—Fairmount?

A. Yes.

Q. Brockway?

A. Yes.

Q. Tygart Valley?

A. Correct.

Q. In other words, there were a substantial number of manufacturers outside at the time Hazel-Atlas was outside fighting it?

A. That is correct.

Q. Don't you remember after the decision in the District Court the suggestion was made in conference between Owens and Hartford that as an inducement to get Hazel-Atlas in they should be offered a participation in the divisible income over and above the fixed amount that was being used for expenses?

A. What year are you referring to?

Q. This is all during 1930.

A. No, I don't remember that.

Q. Don't you remember speaking about that to Mr. Levis?

A. No.

Q. You wouldn't say you didn't talk about it?

A. No, I would not.

Mr. Isseks: At this time I would like to have marked as Government Exhibit 127, a photostatic copy of an original memorandum which has in longhand at the top, "October 8, 1930", and at the end typewritten "October 8, 1930", signed "L. T. W." I understand that to be Mr. Williams. [fols. 1750-1778] It is entitled "Memorandum Owens-Hartford-Empire" in the upper left-hand corner, in handwriting, "Mr. Levis please note 10/16", then in another handwriting: "Discussed with Mr. Levis." Then a mark, "File." I would like to have that marked Government Exhibit 127. (So marked.) It is a memorandum, Your Honor, stipulated by Owens as a genuine document.

* * * * * * *

[fol. 1779] Q. Mr. Smith, I should like to hand you a copy of Government's Exhibit No. 127. The original exhibit was taken by one of associate counsel for Hartford for the pur- [fol. 1780] pose of photostating, and I am sure they will not object—neither will Owens—to using a copy. I hand you the document and I ask you to read it with particular reference to the first page and the three paragraphs on the second page; and then I will ask you some questions.

The Court: This is No. 127?

Mr. Isseks: Yes, Your Honor; as to which Your Honor has deferred ruling. But I should like to see if I can refresh the witness's recollection.

(Witness reads document.)

A. What part of the second page, Mr. Isseks?

Q. Down to the last paragraph on the page, please.

(Witness reads document.)

Q. Have you read it?

A. I have.

Q. Your company had not told Capstan that Owens was sharing in the royalties, as far as you know?

A. I don't know whether we had or not. There was no secret to anybody that we were paying Owens substantial amounts of royalties for license under their patents.

Q. Would you say your company had told Capstan?

A. I can't remember whether I told Capstan or not.

Q. Had your company told Federal?

A. I can't tell you for sure. I would not doubt it.

Q. Does the memorandum refresh your recollection further that Stewart of Capstan was threatening to stop paying royalties after the decision in Pittsburgh?

A. I think he did make such a threat.

[fol. 1781] Q. Does it also refresh your recollection that Beatty was giving you the same kind of indication?

A. I don't remember Beatty.

Q. Does it refresh your recollection in October, 1930, or thereabouts, the date of the document, you were having conversations with Mr. Levis with a view towards inviting Hazel in on the basis where it would not pay any royalties; rather, would receive as much by way of division of royalties as it would obligate itself to pay?

A. No, I don't remember that.

Q. When is your first recollection of conversations with Mr. Levis with regard to making an arrangement with Hazel by which they would be given a share in the divisible income of Hartford?

A. I think that whole question came up, naturally, in 1932, when we were negotiating with Hazel.

Q. Did you talk with Mr. Levis at that time?

A. Yes, about Hazel and other people.

Q. Did you talk with Mr. Lewis about that subject matter prior to the negotiations immediately preceding the execution of the contract?

A. Repeat the question, please.

Q. Did you talk with Mr. Levis at any other time, other than the period early in 1932?

A. That, I can't recall; I don't remember.

Mr. Haight: I don't think he has designated as early as 1932.

Mr. Isseks: He said in 1932, prior to the execution of [fol. 1782] the contract.

Mr. Haight: The decision came down on May 5. The contract was executed on July 1st.

Mr. Isseks: I will withdraw my question; rephrase it, rather.

Q. When is your best recollection of the first conversations you had with Mr. Levis about an arrangement with Hazel, by which Hazel would participate equally with Hartford and Owens over and above a fixed amount?

A. I cannot tell you if I had such a conversation with those definite requirements. We did talk with Mr. Levis off and on about various ways in which we could influence Hazel to become a licensee.

Q. When is the first time you talked with Mr. Levis? How far back in years?

A. I could not tell you.

Q. Did you talk to him shortly after the decision of Judge Gibson, in Pittsburgh?

A. I could not tell you that.

Q. See if I cannot refresh your recollection. Was it not the natural time to talk to Mr. Levis, after Hazel had won a decision in the District Court, in an effort to bring some settlement about?

A. I think that would have been a natural time, Mr. Isseks.

Q. Do you not remember that you did talk to Mr. Levis right after the decision, and before an appeal was taken?

A. No; but I might have.

[fol. 1783] Q. What is your best recollection of whether or not you did talk to him?

A. I cannot place the dates. This Hazel-Atlas question was a topic of conversation for many years.

Q. Does the memorandum which you have in front of you refresh your recollection that as early as October, 1930, you were discussing with Mr. Levis a settlement with Hazel-Atlas, by which they would particpiate in the royalties collected by Hartford from everybody else?

A. No, sir.

Q. You do not deny such a conversation took place?

A. I do not.

Mr. Isseks: I now offer, as Government's Exhibit No. 128, the photostat of an original letter from the defendant, William E. Levis, to the witness, dated November 13, 1931; and stipulated as a genuine document from the files of Hartford.

Q. I hand you Government's Exhibit No. 128, Mr. Smith, and ask whether you can identify the signature?

A. It is Mr. Levis' signature.

Q. Did you receive that letter, Mr. Smith, in the regular course of business?

A. I have no reason to doubt it. May I read it?

Q. Have you read it?

A. No. May I read it?

Q. Please read it, and see if it refreshes your recollection that you did?

Mr. Haight: Was that found in our files?

[fol. 1784] Mr. Isseks: It is stipulated that it is a genuine document which came from the files of Hartford. I made a mistake. I apologize.

Mr. Haight: It must have been received.

Q. Have you read the letter?

A. I have.

Q. Did you receive it in the regular course of business?

A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 128 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, I should like to have you look at Government's Exhibit No. 128. I direct your attention to the first paragraph. Did you have a conversation with Mr. Levis prior to the date of the letter regarding the Hazel-Atlas situation?

A. I cannot tell you. I do not deny it.

Q. Do you remember the conversation?

A. No.

Q. Did you have a conversation subsequent to the date of the letter, namely, November 13, 1931, with Mr. Levis, at which he reported the substance of his conversation with Mr. McNash?

A. I may have.

Q. Do you remember it?

A. No, sir

[fol. 1785] Q. Do you remember what was said?

A. No, sir.

Q. Did you have a conversation with Mr. Carter about the same subject matter?

A. I may have. I don't remember it.

Q. Do you remember the conversation?

A. No, sir.

Q. You notice there is a reference made to "spending an hour with you after our Glass Container Association meeting"?

A. That is correct.

Q. Do you remember that meeting?

A. No, sir.

Q. Did you ever attend any meetings of the Glass Container Association?

A. No, sir.

Q. Did you ever meet any of the executives of the Glass Container Association after the meetings or before the meetings?

A. No. I never attended those meetings. I have been to one or two of their conventions, but I have never been to the meetings.

Q. My question is a little different now. Do you remember talking to any executives immediately before or after the meetings of the Association?

A. If I happened to be in New York, I naturally met a good many of the executives of the concern off and on.

Q. You have not answered my question. Do you remem- [fol. 1786] ber attending conferences with the executives before the meetings of the Association or after the meetings?

A. No, sir.

Q. You don't remember?

A. No, sir.

Q. You don't remember?

A. No, sir.

Q. Do you have any recollection of talking to Mr. Levis or Mr. Carter immediately prior to or shortly after a meeting of the Association, regarding the Hazel-Atlas situation?

A. No, sir.

Q. You do not remember at all?

A. No, sir.

Q. Your memory is not clear on that at all?

A. Not a bit.

Q. You have no recollection whatsoever?

A. I have no recollection of it. I do not deny I did meet.

Q. Have you any recollection of talking with Mr. Levis in 1931 about any proposed settlement of the Hazel-Atlas situation?

A. No definite recollection.

Q. I will take a general recollection.

A. I think this Hazel situation, with a lot of other matters, probably when Mr. Levis and I met, we probably discussed them.

Q. You met Mr. Levis quite frequently, did you not, during the year 1931?

A. It depends upon what you call quite frequently.

Q. How often did you meet him?

[fol. 1787] A. I would not know; perhaps five, six, seven times.

Q. During the entire year?

A. Yes, sir.

Q. Did you talk to him on the telephone during that period?

A. Oh, yes.

Q. How often?

A. That I cannot tell you.

Q. Once a week?

A. No, I would not have any idea.

Q. Less than that or more than that?

A. I should say not as frequently as that.

Q. Once in two weeks?

A. I have no idea.

Q. You have no recollection whatsoever?

A. No. I know I telephoned Mr. Levis on occasions.

Q. There is a reference in here to a Philadelphia suit. That was an appeal from the decision of the District Judge in Pittsburgh?

A. I would assume so.

Q. What is your best recollection?

A. Yes, I would assume so.

Q. In the second paragraph he talks about the outcome of the Philadelphia suit?

A. Yes, sir.

Q. That was an appeal taken by Hartford from the decision of Judge Gibson up in Pittsburgh?

A. That is correct.

[fol. 1788] Q. You said you were seeing Mr. Levis during that year about six or seven times?

A. Something like that.

Q. More or less?

A. More or less.

Q. Do you remember talking to Mr. Levis later in the year 1931 about trying to work out something in connection with the Hazel-Atlas situation?

A. I might have; but I don't remember any particular conversation.

Q. Put it this way: when you saw him in 1931, you talked about the Hazel-Atlas matter, among other things, did you not?

A. Yes, I think I did.

Q. That was uppermost in your mind?

A. I don't know that it was uppermost in my mind.

Q. It was a very important factor in your discussions?

A. It was always a question, as I have so stated, where it was very desirable to have the Hazel-Atlas Glass Company take a license. That matter would come up, off and on.

Q. One of the reasons why you were very desirous: you knew that if Hazel-Atlas came in, these other fellows on the outside would also come in?

A. I did not know any such thing. As I told you this morning, if Hazel-Atlas Company took a license, it might or might not influence the others to come in.

Mr. Isseks: Your Honor, at this time, I should like to [fol. 1789] have marked a photostatic copy of an original letter dated December 2, 1931, from William E. Levis to the witness. The photostat has been stipulated as genuine by the Hartford-Empire Company. It is Government's Exhibit No. 129.

Q. Mr. Smith, do you recognize that signature?

A. I do.

Q. It is the signature of whom?

A. Mr. Levis.

Q. Did you receive that letter in the regular course of business?

(Witness reads document.)

A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Mr. Isseks: I should like to have it read. Before it is read, I should like to ask the witness one question about No. 128.

The Court: Proceed.

Q. In Exhibit No. 128, the third paragraph, there is a reference to Mr. Carter. That is the same Mr. Carter to whom there has been reference before?

A. A member of the Owens organization.

Q. He was at that time, was he not, an executive of Owens?

A. Mr. Carter, at one time, was treasurer. How long he remained treasurer, I do not know.

Q. Later on he became vice-president, did he not, of Owens?
[fol. 1790] A. I do not know that.

The Court: Who was Mr. McNash?

The Witness: He was with the Hazel-Atlas Glass Company.

Q. He was president at that time, was he not, of Hazel-Atlas?
A. I think so.
Q. Had you been seeing Mr. McNash in 1931?
A. I don't think I ever met Mr. McNash.
Q. You mean in 1931?
A. No; I don't remember him.
Q. Did you meet him in 1932?
A. Yes, sir.
Q. I thought maybe you answered as to all time?
A. Oh, no.
Q. You met him in negotiations leading up to the contract?
A. Surely.
Q. You corresponded with Mr. McNash, did you not?
A. Before the negotiations?
Q. Yes.
A. I think I did.

Mr. Isseks: I should like to have Government's Exhibit No. 129 read, please.

Thereupon, Government's Exhibit No. 129, was read to the Court by Mr. McCracken, of counsel for the government.

Q. Does that refresh your recollection that, in the latter part of 1931, you were having conversations with Mr. Levis about Hazel-Atlas?
A. No, but I do not deny it.
[fol. 1791] Q. A time came, did it not, Mr. Smith, when the Circuit Court of Appeals for the Third Circuit rendered a decision?
A. That is correct.

Mr. Isseks: It is a matter of record, but I am trying to get your present recollection.

Q. You learned at the time, did you not, that the case went two-to-one in your favor?
A. I think that is the way it was.

Q. In other words, Judge Gibson's decision was reversed; two judges decided in favor of Hartford; and one judge dissented?

A. I think that is correct.

Mr. Isseks: I think there is no dispute that the decision came down May 5.

The Court: Of what year?

Mr. Isseks: 1932. The citation of that case, for Your Honor's convenience, is No. 59 Federal 2d 399. I think the record shows it was handed down May 5, 1932. Judge Buffington wrote the majority opinion; and Judge Wooley dissented. Judge Davis concurred with Judge Buffington.

Q. Do you remember the time after that decision, Mr. Smith, that you wrote Mr. McNash?

A. I know I wrote him shortly after the decision.

Q. Do you remember sending a copy of the letter to Mr. Carter?

A. No, sir.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit 130, a photostat [fol. 1792] of a copy, a carbon copy of a letter from the witness to Mr. McNash; and on the top of the photostat we have it says: "Copy for Henry W. Carter." It is on the stationery of Hartford. It is stipulated by Owens as a genuine document.

Mr. Haight: I just asked Mr. Isseks, Your Honor, if he had any objection to stating to Your Honor—I thought it might be of some help to you—both the decision of Judge Gibson and the decision of the Circuit Court of Appeals went off on the question of infringement, and not validity. Judge Gibson held it did not infringe. The Circuit Court of Appeals held that it did. That was the so-called Plunger Patent.

The Court: That was the Peiler Patent?

Mr. Haight: That was the Peiler Patent, embodied in what we call the paddle needle and the single feeder.

Q. I hand you Government's Exhibit No. 130, and ask you whether you wrote that document?

A. I did.

[fol. 1793] Q. You sent a copy to Mr. Carter, did you not?

A. It is so marked. I do not deny it.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted over objection.

* * * * * * *

Q. You wrote it. Do you remember writing it?
A. I remember writing a letter to Mr. McNash at that time, and I assume that is the letter.

Mr. Isseks: The copy we have I am told came from the files of Owens. Mr. Middleton can correct me if I am wrong.
Mr. Middleton: What we have always termed the Class [fol. 1794] 2 stipulation, it does include a letter of that date from somebody to McNash, but there was not a stipulation except to the one point that paper was in the Owens files.

Mr. Isseks: I will take that, Your Honor.

Q. Did you hear from Mr. McNash after you wrote the letter?
A. Oh, yes.
Q. Did you get a letter from him?
A. I don't know whether I got a letter or whether he telephoned me.
Q. Did you meet him?
A. I did.
Q. Whereabouts?
A. In New York.
Q. Who was present besides you and he?
A. That I cannot tell you.
Q. Was anybody else present?
A. I think the first time I met him I was alone.
Q. Do you remember where?
A. No.
Q. Tell us what happened, please?
A. I can't tell you what happened at the first meeting.
Q. You mean you don't remember anything about it at all?
A. Of course we must have discussed——
Q. I don't care what you must have done. I want your best recollection as to what was said by both of you?
A. That I cannot give you.

[fol. 1795] Q. What did you talk about?

A. We talked about the decision in the suit which was unfavorable to them, was there any basis in which we could get together, the question of his taking a license, but just what was said I cannot tell you at the first meeting.

Q. Don't you remember Mr. McNash said he was going to file a petition for writ of certiorari to the Supreme Court?

A. He might have said so.

Q. Don't you remember he told you that you had two judges, Judge Buffington and Davis, and he had two judges, Judge Woolley and Gibson, he was going to try to get to the Supreme Court?

A. I do not remember.

Q. Don't you remember Mr. McNash said Judge Buffington's opinion relied primarily on the so-called Clarke article in the paper?

A. No.

Q. Didn't he mention it at all?

A. I can't tell you.

Q. Do you remember anything else about the conversation?

A. No.

Q. Was Mr. McNash there alone?

A. I think so.

Q. Did he have counsel with him, do you remember?

A. Well, he had counsel at other meetings.

Q. No, at the first meeting?

[fol. 1796] A. I am of the impression Mr. McNash and I met alone.

Q. What was the outcome of your interview?

A. I think the outcome was we would meet shortly again.

Q. Do you remember shortly after that decision of the Court of Appeals of the Third Circuit there was a decision in the Sixth Circuit?

A. I remember about that time we got another decision on another patent.

Q. You remember that decision was not 100 per cent your way?

A. No. As I remember, it was on the phase change patent and there were two circuits that disagreed.

Q. In other words, the Third Circuit Court held your way——

Mr. Haight: No.

Q. Which Circuit Court disagreed?

A. That I can't remember.

Q. You remember there was a disagreement of some kind between two Circuits?

A. Yes.

Q. And you were worried, were you not, about somebody trying to get to the Supreme Court on account of the difference of opinion?

A. Yes.

Q. Didn't Mr. McNash also tell you he was going to fight it in the Supreme Court in view of the decision in the Third Circuit?

A. I cannot tell you whether McNash told me that or somebody else. I do remember that their attitude was that [fol. 1797] they were going to try to bring this before the Supreme Court on a writ of certiorari. Our own lawyer said that was impossible, they didn't have any ground for so doing. Now who was the first one to tell me that, whether it was Mr. McNash or not, I cannot tell you.

Mr. Isseks: At this time, Your Honor——

Mr. Haight: Which suit are you referring to?

The Witness: The Third Circuit.

Mr. Isseks: Are you through?

Mr. Haight: Yes.

Mr. Isseks: At this time, I would like to have marked as Government's Exhibit 131 a copy of an original telegram sent by the witness to the defendant Falck at Elmira, New York. This copy is dated May 12th, 1932, and it has been stipulated by defendant Corning and also by defendant Falck, who is represented by the same counsel, as a copy of a genuine document.

Q. I will ask you, Mr. Smith, if you recall sending the original of that telegram to Mr. Falck?

A. I do not happen to remember it. Of course I do not deny it.

Q. Mr. Falck at that time was the executive head of Corning and also a director of your company?

A. Yes.

Q. He was an officer of Corning, he was also an officer of Empire Machine—I am subject to correction, Mr. Sayles, is that right?

Mr. Sayles: That is right.

[fol. 1798] Mr. Isseks: I offer this telegram, Exhibit 131, in evidence.

The Court: It may be admitted over objection.

(Reading Exhibit 131.)

Q. Mr. Smith, look at that telegram, again, and see if I can't refresh your recollection. Hartford had one decision in the Eighth Circuit on the phase change patent, had they not?

A. They had.

Q. They lost a decision in the Sixth Circuit on this phase change patent?

A. No, the decision in the Sixth Circuit, as I remember it, was a different decision granting us certain claims which the Eighth Circuit denied the validity of.

Q. You say in your telegram, Cincinnati Court of Appeals decision conflicts considerably with Eighth Circuit decision on this phase change patent so that Supreme Court likely to grant certiorari to defendant?

A. They conflicted but we did not lose.

Q. Who told you the Supreme Court was likely to grant certiorari to the defendant?

A. I suppose one of my lawyers told me.

Q. Some lawyer told you?

A. Yes.

Q. Of course you were guided by his opinion?

A. Yes.

Q. You felt, did you not, unless you could get Hazel to become a licensee they might get certiorari?

A. I don't know about that.

[fols. 1799-1801] Q. You wrote it?

A. Yes. I so stated it.

* * * * * * *

Q. There was no controversy between you and the government at that time, was there?

A. Not that I know of.

* * * * * * *

[fol. 1802] Q. I was going to ask you, Mr. Smith, why you say here Cincinnati Court decision conflicts with Eighth

Circuit Court decision on phase change patent so Supreme Court likely to grant certiorari of defendants unless we can get Hazel to become licensee. What is the relation of Hazel if it was not in the case?

A. That is what I was wondering myself.

Q. Wasn't it because Kearns-Gorsuch was a wholly owned subsidiary of Hazel-Atlas?

A. Yes, I guess so.

[fol. 1803] Q. And wasn't it the same counsel so far as you knew for Hazel-Atlas?

A. Yes.

Q. So it was only by getting Hazel to become a licensee that you could avoid the Kearns-Gorsuch people going to Supreme Court on a conflict of decision?

A. I do not know about that. We petitioned the Court ourselves.

Q. After you signed that contract—We will come to that. After you signed the contract and gave them one-third of your divisible income, then you petitioned. Weren't they talking about petitioning at that time?

A. That I could not tell you.

Q. In any event you sent the telegram?

A. I did.

Q. At the time you sent the telegram you stated what you understood to be the facts of the situation?

A. I must have.

Mr. Haight: To make it entirely clear, the certiorari which we asked for in the Sixth Circuit was in the Lamb Company case—was it Kearns-Gorsuch too?

Mr. Isseks: Sure. It was part of the deal. We will come to that.

Q. Now you say here, "Hope to see McNash next week". Did you see him?

A. I do not know.

[fol. 1804] Q. Well, we will go back a little bit. Do you remember about this time, the date of your telegram, May 12th, you heard from Toledo that someone was snooping around trying to find out who wrote the article which was relied on so much by the Circuit Court of Appeals?

A. No.

Q. You never heard of it?

A. No.

Mr. Haight: You ask him if he didn't hear shortly after that.

The Court: Restate your question.

Q. Don't you remember that about the time you heard of these two decisions, the Third Circuit and Sixth Circuit, you heard from Toledo from a representative of Owens that someone was around trying to find out who was responsible for the Clarke article?

A. No.

Q. You knew about the Clark article?

A. I never knew about the Clark article until years after it was written.

Q. Did you hear about it in 1932?

A. Yes. I think that was the first time I heard about it.

Mr. Isseks: I will see if I can refresh your recollection. I now have marked a letter of May 16th, 1932, from Owens-Illinois Glass Company, signed J. E. Naylor, Patent and License Department, written to Mr. R. F. Hatch, Hartford-Empire Company, and stipulated as genuine by Owens, Ex- [fol. 1805] hibit 132. Then I will have marked at the same time as Exhibit 133 a three-page memorandum dated the same date, May 16th, 1932, headed "Memorandum," and signed J. E. Naylor. That, too, Your Honor, is stipulated by Owens.

Q. I hand you Exhibits 132 and 133, and ask you whether that refreshes your recollection that Mr. Naylor gave you a report on the telephone on or about Friday, May 13th, of the subject matter of the letter and the memorandum.

(Witness looks at exhibit.)

Q. Have you read that memorandum, Mr. Smith?

A. Pretty near.

Q. I am sorry.

A. (Witness continues looking at exhibit): All right.

Q. First of all, who is Mr. Hatch?

A. Mr. Hatch is employed by Hartford-Empire Company.

Q. In what capacity?

A. He is in the Patent Department.

Q. What is the nature of his work, is he a lawyer?

A. I think he did pass the examination. He is a solicitor really.

Q. He was employed by you, of course, in '32?

A. Correct.

Q. And has been employed since then?

A. Yes.

Q. As a matter of fact, his employment goes way back, doesn't it?

A. Yes.

[fol. 1806] Q. Do you know Mr. Naylor?

A. I think I met Mr. Naylor once or twice.

Q. You know he was employed by the Owens people?

A. Yes.

Q. Directing your attention to Exhibit 132, the first full paragraph; does that refresh your recollection that Mr. Naylor made a telephone report to you with regard to the Clarke article?

A. No.

Q. No recollection whatsoever?

A. None at all.

Q. Don't remember any at all?

A. No.

Q. Don't remember talking to anybody of the Owens about a Clarke article shortly after a decision of the Circuit Court of Appeals?

A. No.

Q. Do you remember talking to Mr. Hatch?

A. No.

Q. Do you remember talking to anybody else in your organization?

A. I may have spoken to Colonel Brown.

Q. What is your best recollection; you did?

A. No, I have no recollection. I do not deny I did, but I have no definite recollection.

Q. You say you do not deny you did not. You mean you do not deny you did?

A. Yes.

[fols. 1807-1809] Mr. Isseks: At this time I offer Exhibits 132 and 133, Mr. Naylor of Owens-Illinois, was writing to Mr. Hatch of Hartford, and the memorandum he was writing was enclosed in the letter, and I submit there is proper proof.

Mr. Haight: I object on behalf of Hartford to the proffered documents and all testimony with respect to this so-called Clark article.

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Mr. Isseks: Your Honor, we are not here making any attack upon any patent. I want to point out the purpose of this proof is not the Clarke article as such. We are coming to that very shortly. We are offering this proof to show, and it will be brought out to show that right after the decision in the Circuit Court of Appeals, counsel for Hazel-Atlas was kind of puzzled at the whole decision. Judge Buffington relied primarily on an independent source. They were curious who wrote the article, and they got a private detective who started snooping around, and they come out here where Clarke lives and tried to get the article and use it in connection with the Circuit Court of Appeals.

[fol. 1811] The Court: What Circuit Court of Appeals?

Mr. Isseks: Not the Circuit Court of Appeals. Supreme Court, I mean. Excuse me. The next document will show there was a gentleman by the name of McCarthy who came from the well-known firm of patent investigators of New York, Swartz and—Mr. Philbin can tell us their names—yes, Hammer & Swartz. This is our purpose of putting this document in evidence. Hazel-Atlas did not like it. Then we are going into the Clarke article. Now on the Clarke article I intended to show when Hartford prepared the article and how Hartford and its co-conspirator Owens prepared the article and prepared it to dupe the Patent Office.

The Court: Suppose they did dupe the Patent Office?

Mr. Isseks: The case in the Supreme Court, the American Tobacco case, holds the Court could deduce from a manifestation of consciousness of wrongdoing in connection with other activities in the case. What they did which we claim to have been illegal, here two people—Hartford and Owens—they make a contract in April, 1924. We say they conspired to violate the Anti-Trust Laws. They try then to put one over on the Patent Office and to get a patent which they now claim dominates the industry and which they used with another co-conspirator, Hazel-Atlas. I don't know if it would make any difference whether Hartford did it alone. I am going to point out—I don't know if the Court has ever seen this document—

The Court: Would it serve any purpose in this action to [fol. 1812] go into the truthfulness of the Clarke article?

Mr. Isseks: I don't know about it. I think you will find one person will say he doesn't know its truth. Clarke is going to take the responsibility. I don't know whether it is true.

The Court: I will say to counsel that I am not interested at all in the Clarke article with reference to any influence that it may or may not have had in the Patent Office on the issuing of the patent. If that Clarke article, if counsel maintains and is prepared to show that this Clarke incident has some bearing on the maneuvering that was participated in, or claimed to be participated in, prior to the merger or agreement between Hazel-Atlas and Hartford-Empire and the Owens Company, then he may show it for that purpose.

Mr. Isseks: That is the only purpose we want it for. We are not trying to show the patent is invalid.

The Court: I am not interested. I will repeat to counsel, in any effect, claimed or otherwise, that this Clarke article may have had upon the Patent Office and the subsequent action in issuing the patent. I am interested only if counsel is prepared to show any effect that it had, or any part that it played, in the efforts toward and the merger of these two concerns.

Mr. Isseks: The purpose we offer is to show it was part of a plan to gain control of all the licensees they now have. This witness testified the first day—

The Court: If that is the purpose, I will overrule the ob-[fol. 1813] jection, to the reference to the Clarke matter, on the assumption that you limit it to that purpose.

Mr. Isseks: That is all it is offered for, Your Honor.

Mr. Haight: We reserve the right to move to strike it out if it is not connected.

The Court: Yes.

Mr. Middleton: May I inquire of Your Honor whether or not its usefulness here does not depend, in the first instance, upon its truthfulness? I feel obligated to answer one comment that Mr. Isseks made when an offer was made to do something. Now you can't dupe some one by telling him the truth.

The Court: The Court is not interested in going into the truthfulness or untruthfulness of the Clarke article. I assume counsel intends to go into the circumstance surrounding the publication of the Clarke article.

Mr. Middleton: But if that article is not untrue then of what importance could it be?

The Court: That may detract from its importance.

Mr. Middleton: It could be influence and it could be perfectly proper influence.

The Court: I am not going into any question pro and con as to the truthfulness or untruthfulness of the Clarke article.

Mr. Isseks: I would like to adopt Your Honor's suggestion. We are going to offer it solely to show the maneuvering of Hartford and Owens.

The Court: Limit it to that purpose only. We will now take a recess for 15 minutes.

(Recess 15 minutes.)

[fol. 1814] (After recess.)

Mr. Isseks: Your Honor, at this time I offer Government's Exhibits Numbers 132 and 133 for the limited purpose for which Your Honor indicated they would be admissible.

The Court: They may be admitted, over objection.

Mr. Isseks: I should like to have No. 132 read first, and then, No. 133.

Thereupon, Government's Exhibits numbers 132 and 133 were read to the Court by Mr. McCracken, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked a photostat of an original document, dated May 20, 1932, as Government's Exhibit No. 134. It purports to have been written by Mr. R. F. Hatch. It is dated May 20. Subject: "Clarke article in National Glass Budget". The copy we have here has on it the Owens-Illinois Glass Company stamp, dated May 21, 1932. It has been stipulated as genuine.

Q. I will ask the witness first, whether that is Mr. Hatch's signature?

A. Yes, I think it is.

Mr. Isseks: I understand from Mr. Wall that the copy he has located in the files of Hartford is marked: "Copy for Mr. Brown"; and that, too, has the signature, Your Honor.

[fol. 1815] I should like to ask the witness whether he recalls whether or not he received a copy or the original of the memorandum which is now marked Government's Exhibit No. 134?

The Witness: All right, Mr. Isseks.

Q. You did not see it?

A. No, I did not.

Mr. Isseks: I offer it in evidence, anyway, for the limited purpose Your Honor indicated it might be admissible.

Mr. Middleton: Objection.

The Court: Is it certified?

Mr. Isseks: It is certified as an original from the files of Owens. Mr. Wall has shown me a copy showing that a copy went to the defendant Brown, who is also a director of Hartford.

The Court: It may be admitted, over objection.

Mr. Middleton: That is not covered by the Class 1 stipulation, however. It is only admitted to be a paper in the files?

Mr. Isseks: That is right, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 134 was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked Government's Exhibit No. 135, a photostatic copy of an original letter dated May 20, 1932, from Mr. [fol. 1816] Hatch to Mr. Naylor, Owens-Illinois Glass Company; stipulated by Owens as a copy of a genuine document in their files.

Q. I will ask the witness whether that is Mr. Hatch's signature?

A. It is.

Mr. Isseks: I offer it in evidence for the limited purpose.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 135 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to offer as Government's Exhibit No. 136 a photostat of an original letter dated December 11th, 1925, signed Hartford-Empire Company by R. D. Brown; and addressed to Mr. Henry W. Carter, of the Owens Bottle Company, Toledo, Ohio. This has been stipulated as a genuine document by Owens.

Q. Mr. Smith, is that the signature on the photostat of Mr. R. D. Brown?
A. It is.

Mr. Isseks: Your Honor, Mr. Brown is a defendant in this case. This seems to have been identified. It comes from the files of Owens. I assume there is no question about the authenticity of the document. I offer it in evidence for the limited purpose, again.
The Court: It may be admitted, over objection.

* * * * * * *

[fol. 1817] The next document I offer, Your Honor, is Government's Exhibit No. 137, which purports to be a photostatic copy of a document from Henry W. Carter, bearing the initials "H.W.C."; addressed to Mr. W. H. Boshart; on a letterhead, reading: "Owens Bottle Company, Inter-Company Correspondence"; May 25, 1926. It is stipulated by Owens as a photostatic copy of a genuine document. I offer it, Your Honor, in evidence for the limited purpose.
The Court: It may be admitted, over objection.
Mr. Isseks: I should like to have it read.

Thereupon, Government's Exhibit No. 137 was read to the Court by Mr. Lewis, of counsel for the government.

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[fol. 1818] Mr. Isseks: I have offered now a photostatic copy of a letter dated July 9, 1926, from Mr. Hatch to National Glass Budget; attention Mr. Kimes.

* * * * * * *

[fol. 1819] Q. Mr. Smith, on here are the signatures of R. F. Hatch: Do you identify those signatures?
A. I do.
Q. As those of Mr. Hatch?
A. They are.

Mr. Isseks: I offer the document in evidence, Your Honor, Government's Exhibit No. 138, for the limited purpose.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 138 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, you would not know how Hartford obtained the photostat of the original letter Mr. Hatch sent to the National Glass Budget, would you?

A. No, sir.

Mr. Wall: The handwriting on the first page, stricken out, which you are not offering, explains that, does it not? Mr. Barnett's letter to Judge Haight. Either Judge Haight or Mr. Barnett got it from the National Glass Budget.

Q. Looking again at Government's Exhibit No. 131, the telegram you sent to Mr. Falck, on May 12, the last few words say: "Hoping to see McNash next week". Did you see Mr. McNash the following week?

A. I cannot remember accurately. I may have.

Q. Do you remember having negotiations which led up to [fol. 1820] the contract shortly after you sent that telegram May 12? The contract is dated August 6th, as of July 1.

Mr. Philbin: The agreement was dated as of July 1, 1932, and was actually executed July 21, 1932.

Mr. Isseks: Thank you very much, Mr. Philbin. I thought it was actually executed a little later.

Q. Mr. Philbin says that the contract was signed July 21, as of July 1. The telegram you sent Mr. Falck was dated May 12?

A. Yes, sir.

Q. Between May 12 and the date of the execution of the contract, July 21, were you active in connection with the negotiations leading up to the final contract?

A. I was.

Q. Who participated in those negotiations on behalf of Hartford-Empire?

A. I think Colonel Brown; possibly Mr. Eldred some of the time.

Q. Who is Mr. Eldred?

A. An officer of the Hartford-Empire Company.

Q. A defendant in this case?

A. I don't know.

Q. What is his capacity with your company? What does he do?

A. Now he is one of our vice-presidents.

Q. Also general manager?

A. I don't think he actually has that title, but he more or less acts as a general manager.

Q. Colonel Brown, yourself, and you said possibly Mr. Eldred?

[fol. 1821] A. Yes, sir.

Q. Anybody else?

A. You mean before the negotiations were completed?

Q. Between May 12 and July 21, my question was who participated in the negotiations?

A. I think——

Q. To your best recollection.

A. At one meeting I think Mr. Falck was there; and at one or two meetings, Mr. Amory Houghton.

Q. Those gentlemen participated as directors of your company?

Q. Anybody else, sir?

A. I cannot remember.

Q. Did anybody participate on behalf of Owens?

A. Mr. Levis; and I think Mr. Williams was at one or two of the meetings.

Q. Mr. Carter?

A. That I don't remember; he may have been there.

Q. Mr. Phillips?

A. I don't remember Mr. Phillips.

Q. Who participated in the negotiations on behalf of the Hazel-Atlas Company?

A. Mr. McNash and Mr. Philbin.

Q. Anybody else?

A. I don't think so.

Q. Do you remember a time came when an agreement was reached?

A. Yes, sir.

[fol. 1822] Q. Do you remember how soon that was?

A. No. I think we had many protracted meetings.

Q. Where were they held?

A. Most of them were held in the Biltmore Hotel.

Q. In New York City?

A. New York City.

Q. Do you remember that there was a discussion as to what Hazel-Atlas wanted?

A. Oh, yes.

Q. Do you remember that Hazel-Atlas wanted equal participation in the royalties?

A. They did. Hazel-Atlas Company said they would be willing to take a license and pay back damages. They wanted equal participation in royalties because they claimed that they had a serious claim against the Owens Company under the Lott Patent; that the Owens Company had no right to have signed up with us in 1924, giving us the exclusive license; and that therefore if they should prove that they were right in their contentions, that would immediately, of course, be a very serious thing for us, because we had extended license agreements with certain rights carrying to our licensees for the Hazel-Atlas field of ware; and that, therefore, if they were going to sign these contracts, they felt they should be on a par with the Owens Company.

Another reason that the agreement seemed advisable to me was that the Owens Company agreed to give up their [fol. 1823] forty free units, which I always thought they were not really entitled to anyway. That meant a very large sum of money to us: $440,000 a year. In addition to that, the $600,000 which we were allowed as a deduction for expenses: that was raised to $850,000. So that there were $250,000 there per year.

In addition to that, at the time that contract was made, according to statistics and figures discussed then, there was not any question in our minds but what Hazel-Atlas Glass Company would pay us more per year than their participation amounted to from us.

So we received one million dollars in cash for back damages. We received $850,000 as a base for deduction. The Owens Company gave us their free feeders, which had a value, as stated in the contract, of $440,000. In addition, another valuable right came to us, because the Hazel-Atlas Company gave us, Hartford, a non-exclusive right in all their gob-feeding and forming machine inventions.

At that time Hazel-Atlas Glass Company had a very efficient engineering corps; and also at that time they had some patents whose claims read verbally on some of our forming machines; and we thought that if we could protect ourselves, and, at the same time, protect our licenses, it was advisable to go ahead with the negotiations on that basis.

Q. Up to that time you had been paying Owens one-half?

A. That is correct.

[fol. 1824] Q. Was it 600,000 or 650,000?

A. $600,000.

Q. Was Owens getting more than they were paying?

A. That I don't remember.

Q. But they were getting a very substantial amount of money?

A. A very substantial amount of money.

Q. About how much were they getting for the year 1931?

A. Do you want just my guess?

Q. Your best recollection?

A. I would have said a little over $500,000.

Q. You don't recall how much they were paying?

A. No; but they were paying around, again pure recollection, and I should like to have it checked——

Q. Oh, sure, subject to correction.

A. Around 400,000 or 380,000 dollars.

Q. They were getting more than they were paying at that time?

A. Yes, sir.

Q. You said, I believe, the way things looked, Hazel-Atlas would pay more than they would get?

A. Yes, sir.

Q. The million dollars: half would go to Owens and half to you?

A. That is correct.

Q. Did you finish your statement as to what took place at the conferences?

A. Those are the major things that I remember.

Q. Do you remember anything else?

[fol. 1825] A. None of the details. Those were the big things.

Q. How long a period of time did these negotiations take?

A. I have said, off and on, for two or three weeks.

Q. I want to bring this—to have the Court familiar with what was going on—bring it down to the date, the year 1940—your best recollection, subject to correction, as to the actual figures. How much did you pay Hazel-Atlas one-third of the divisible income, that is, income over $850,000; how much did you pay them in the year 1940; or if you do not remember 1940, I will take 1939.

Mr. Philbin: May it please the Court, would it not be better to get those actual figures in the record?

Mr. Isseks: Do you have the figures now? I will stipulate them. I was trying to get a general figure.

The Court: You may state the exact figures if you have them at hand.

Mr. Isseks: I have not them at hand.

Mr. Philbin: May it not be more helpful to Your Honor to have the exact figures than Mr. Smith's recollection?

Mr. Goodrich: They are in the stipulation somewhere.

Q. Yo you have any other recollection of what transpired during these three weeks' negotiations?

A. I should think that would be enough.

Q. Do you not remember you also had supplemental con-[fol. 1826] tracts with both Hazel-Atlas and Owens?

A. Yes, I think there were supplemental contracts.

Q. What was the reason for the supplemental contracts?

A. First of all, I have forgotten just what they were.

Q. Do you not remember someone raised the question that perhaps somebody would come along later on, a governmental decree perhaps, and upset your paying Owens and Hazel-Atlas this portion of the divisible income; therefore they should be in position to go ahead under a different basis?

A. I remember there was a supplemental contract with Hazel to that effect. I cannot tell you just what it was, but certain conditions of the contract would change if the government or anybody else ever upset these contracts.

Q. It was the same kind of contract with Owens? In other words, somebody then had in mind that there might be a lawsuit, and there might be a decree?

A. No, I would not think that was so. They insisted upon it, and we were perfectly willing to give it to them.

Q. I want to give you all the benefit of your recollection of what happened. Do you remember anything else that happened during those two, three, four weeks' negotiations?

A. No. I might if you refresh my memory.

Mr. Isseks: Your Honor, at this time I should like to now read from Exhibit A of a stipulation between the government and the Hazel-Atlas Corporation. The stipula-[fol. 1827] tion itself will be offered in evidence at an appropriate time. But I should like to point out that for the year 1939 the amount paid to Hartford by Hazel-Atlas, "Royalties for Hartford Inventions for the year 1939, $1,153,372.63"; amount received from Hartford, "Under royalties for Hazel-Atlas inventions", et cetera, $1,509,633.48.

Q. You heard me read that, did you not, Mr. Smith?

A. I was not listening to it.

Q. I will show the exhibit. It is Exhibit E of the stipulation between the government and Hazel-Atlas in this suit. The figures show that for the year 1939, you paid Hazel-Atlas some $300,000 more than you received?

A. That is correct.

Mr. Isseks: The stipulation, Your Honor, also shows that for 1938 there was an excess payment of around 200 odd thousand; for 1937, there was 250 above; for 1936, there was around 150,000; 1935, a little over 100,000; 1934, 50,000; and 1933, 40,000; and for the first half year of the contract, namely, the half year of 1932, Hazel-Atlas paid 217,000, and only received 180,000. In that year Hazel-Atlas paid more.

My associate points out to me we are not stipulating the quotation that it is "Royalties for Hazel-Atlas Inventions". That is for Your Honor to find out. We will develop the facts as we go along.

As to the Owens figures, I will ask the witness one question.

[fol. 1828] Q. In 1935, you gave Owens, did you not——

A. We did.

Q. —in lieu of their one-third, you gave them a flat sum?

A. We did.

Q. How much?

A. Two and one-half million.

Q. Was it paid in cash?

A. Over a period of time.

Q. It has been paid out?

A. Yes, sir.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit 139 a photostatic copy of a memorandum dated May 28, 1932, from the defendant William E. Levis, addressed to H. W. Carter, H. G. Phillips, and J. H. McNerney. It is on the stationery of Owen-Illinois Glass Company, Intra-Company Correspondence. Attached to it is a memorandum dated May 27, 1932, which has on the top: "Outline of Proposed Contract between H-E, O-I and H-A". The document has been stipulated—both pieces of paper—as a copy of an original that is genuine, by Owens-Illinois, on page 22 of the stipulation.

* * * * * * *

[fol. 1829] The Court: It may be admitted over objection.

Mr. Wall: Will Owens furnish photostats?

Mr. Isseks: We will deliver it to you tonight. As soon as we get through here we will ask the Clerk to be kind enough to deliver it.

(Reading Exhibit 139.)

Q. Now, Mr. Smith, you said Mr. Falck participated in these negotiations?

[fol. 1830] A. I think so. Not continuously as I did. Perhaps he was only at one meeting, as I remember.

Q. He was not very happy about it, was he?

A. That I can't tell you.

Q. You don't remember?

A. No.

Q. Do you remember having some correspondence with Mr. Falck about the negotiations?

A. I probably did.

Mr. Isseks: At this time, Your Honor, I would like to have marked as Government's Exhibit 140, a photostatic copy of a letter dated June 15, 1932, written by the witness to Mr. Falck. It is five pages and it has been stipulated as genuine by Hartford on page 20 of their stipulation.

* * * * * * *

[fol. 1831] Mr. Isseks: I would like to make one correction.

Q. On page 592, you answered a question as to who participated in negotiations, and you said "at one meeting, I think Mr. Falck was there and at one or two meetings Mr. Houghton". My question is, which Mr. Houghton did you refer to?

A. Mr. Amory Houghton.

Q. Mr. Smith, have you read Government's Exhibit 140 for identification?

A. I have.

Q. Did you write that letter?

A. I did.

[fol. 1832] Mr. Isseks: I offer in evidence the above letter dated June 15, 1932, sent by registered mail, special delivery, five pages, from the witness to Mr. Falck.

The Court: It may be admitted over objection.

(Exhibit 140 read by Mr. McCracken.)

Q. The "O" in that letter is whom?

A. The Owens Company.

Q. And the "H-A" in that letter is what company?

A. Hazel-Atlas.

Q. You note that you say in the foot note, "I am destroying this letter"?

A. I do.

Q. Did you destroy a copy?

A. I suppose I did. I have been trying to remember why I put the foot-note there.

Q. Ever since you read it yesterday you have been trying to remember why you put the foot-note there?

A. Yes.

Q. What is your best recollection of why you put it there?

A. I just can't tell you. I wish I knew.

Q. No recollection whatsoever?

A. No, except——

• • • • • • •

[fol. 1833] Q. What is your best recollection?

A. Well, when the copy of that letter would go to my secretary, I would assume that she would have destroyed the copy, and she apparently did not.

Q. You dictated the words, "I am destroying this letter"?

A. I did.

Q. Why did you do that?

A. I haven't the least idea.

Mr. Isseks: I would like to get the original of this letter from someone. I call upon Mr. Sayles to produce the original. Let's find out whether the original was destroyed or not.

Mr. Sayles: I haven't it here. I will have to look it up.

Mr. Isseks: All right.

Q. You have no recollection why you wrote it?

A. Oh, yes, I can tell you why I wrote it.

Q. I mean the words, "I am destroying this letter"?

A. No. I have been trying to think very hard about that; I cannot tell you.

Mr. Isseks: Your Honor, at this time I would like to [fol. 1834] have marked photostatic copy of a memorandum, Government Exhibit 141, which is dated July 18, 1932.

* * * * * * *

(Government's Exhibit 141.)

The Court: It may be admitted over objection.

* * * * * * *

[fol. 1835] Right now I am reading from the minutes of the Board of directors of July 19, 1932. These were the original minutes given to us by Mr. Middleton. Page 255. I offer these minutes, but, obviously, we don't want to offer the book. I will read beginning at the bottom of page 255.

Mr. Haight: And it is received, I suppose, subject to the objection of the other defendants?

[fol. 1836] Mr. Isseks: Certainly, and anybody may correct the minutes if they want to.

Mr. Haight: I don't know anything as to their relevancy as to other defendants.

Mr. Isseks (reading): "The secretary presented revised drafts dated as of July 1, 1932, of the eight agreements presented to the Executive Committee and approved at its meeting of June 15, 1932, as follows: four agreements between this company and Hartford-Empire Company, entitled as follows: 'Agreement for Cancellation and Reinstatement of Contracts and for a Division of Income from Tucker, Reeves and Beatty, Licensees; General License Agreement; Suction Inventions License Agreement; Supplemental Agreement.'

"Two agreements between this company and Hazel-Atlas Glass Company entitled as follows: 'General License Agreement; Supplemental License Agreement.'

"Two agreements between Hartford-Empire Company and Hazel-Atlas Glass Company entitled as follows: 'General License Agreement; Supplemental Agreement.'

"Messrs. Levis, Carter and Williams explained in detail the substance of the agreements, the changes made thereby in the relations of this company with Hartford-Empire Company and with Hazel-Atlas Glass Company, and the changes in the agreements as between the drafts previously approved by this Board and those now presented. After full discussion and on motion of Mr. Schwenck, seconded by Mr. Atherton, and unanimously carried, the foregoing four agreements between this company and Hartford-Empire Company, and the two agreements between this com- [fols. 1837-1838] pany and Hazel-Atlas Glass Company, were approved, and the president or a vice-president, and the secretary or an assistant secretary, were authorized and directed to execute and deliver them in the name of this company, and the proper officers of this company were authorized and directed to do any and all things in their judgment necessary to carry the same into effect.

"Messrs. Williams and Carter were excused from further attendance at the meeting."

A previous page shows the following directors were present: Mr. William Ford, Chairman, H. F. Atherton, W. H. Boshart, H. E. Collin, Ben F. Hazelton, Jr., William E. Levis, H. G. Phillips, Fred W. Schwenck, and J. H. McNerney, Secretary.

* * * * * * *

[fol. 1839] At this time I would like to reserve exhibit numbers 142 to 149, inclusive, for the eight original documents. We have photostats and at a convenient recess, Mr. Apsey will read them to the stenographer. They are all formal documents, except as to any objection anyone makes, I don't see how they can, but they may, as to materiality,—I would like to have them offered now and Your Honor can pass on their admissibility now or later on.

* * * * * * *

[fol. 1840] The Court: You better do it now, I presume.

Mr. Isseks: The first one is a contract dated July 1, 1932, between Hartford-Empire Company and Hazel-Atlas Corporation. It is signed by the witness as president of Hartford and by Mr. McNash as president of Hazel-Atlas. That is Exhibit 142. 143, Your Honor, is a supplemental agreement between Hartford and Hazel-Atlas, signed by the same executive officers. In some of these cases there are subsidiaries of Hazel-Atlas who are also parties, but I am not mentioning their names.

Mr. Middleton: Is that first one entitled "General License Agreement"?

Mr. Isseks: That is right. That is 142.

143 is the supplemental agreement between Hartford and Hazel-Atlas.

The next one, Your Honor, is the agreement for cancellation and reinstatement of contract and for division of income from Tucker, Reeves and Beatty licensees, between Owens-Illinois and Hartford-Empire, and it is signed by Mr. Levis as president of Owens-Illinois, attested to by Mr. Williams, as assistant secretary, and signed for Hartford-Empire by the witness. That is Exhibit 144. Up to now I have been offering printed copies furnished us by counsel for the defendants.

[fol. 1841] 145, General License Agreement between Hartford-Empire Company and Owens-Illinois Glass Company, dated July 1, 1932, signed by Hartford-Empire Company by F. Goodwin Smith, president, and by Owens-Illinois Glass Company by William E. Levis, president. Mr. Levis' signature is attested to by Lloyd T. Williams as assistant-secretary. Owens-Illinois Pacific Coast Company also is a party.

146 we do not have a printed copy of, but we have a photostat of printed copy, furnished us by Owens-Illinois, and stipulated as genuine. This is a supplemental agreement between Hartford-Empire Company and Owens-Illinois Glass Company, dated July 1, 1932, and signed by the same people that signed the previous agreement, Mr. Smith and Mr. Levis.

The next one is entitled, "Suction Invention License Agreement" between Hartford-Empire Company and Owens-Illinois Glass Company, dated July 1, 1932, and signed by the same people that signed the two previous exhibits. That is Exhibit 147.

148 is "General License Agreement" between the Owens-Illinois and Hazel-Atlas dated July 1, 1932, signed by Mr. Levis as president of Owens Company, attested to by Mr. Williams as assistant secretary, and on behalf of Hazel-Atlas signed by Mr. McNash as president.

149 is a photostatic copy of an original document. All the others were either printed copies or photostats of printed copies. This is a supplemental license agreement between Owens-Illinois and Hazel-Atlas Company, dated July 1, 1932. It is signed by Mr. Levis as president,

[fol. 1842] attested to by Mr. Williams as assistant secretary, and by Mr. McNash as president of Hazel-Atlas.

I offer them in evidence.

The Court: They may be admitted over objection.

Q. Now, Mr. Smith, during these negotiations that you had, and which led up to the various contracts, was there also a discussion with regard to an arrangement between Hazel-Atlas and Owens?

A. Yes.

Q. And don't you remember that during those discussions Hazel-Atlas took the position that Owens might go off on suction entirely and thereby cut down the amount they were paying in to Hartford?

A. No, I don't remember that.

Q. See if I can refresh your recollection. Exhibit 141, in evidence, which is a memorandum written by Mr. Carter, says on the bottom of page 14: "Hazel has expressed the fear that Owens-Illinois may go entirely to suction, and thus cease to contribute to Hartford's divisible income while still getting its split of the fund to which Hazel might be largely contributing." You don't remember that?

A. No sir.

Q. Don't you remember Hazel was assured by Owens' agreeing that if they reduced the proportion of ware made by Owens and its subsidiaries on feeders to the least possible extent, Owens would pay Hazel a certain amount of money?

A. No, Mr. Isseks, those were all matters between Owens and Hazel and I never knew about these contracts.

[fol. 1843] Q. Don't you remember Owens didn't like that at all but had to go through with it because it was necessary in order to secure Hazel's final agreement to the whole set-up?

A. No.

Q. Never heard of that before?

A. No, not until this morning.

Q. You participated in the negotiations, didn't you?

A. Oh, yes.

Q. Didn't you hear about this proposed arrangement between Owens and Hazel-Atlas?

A. No.

Q. Don't you remember that Owens was kind of worried about the fact they were giving one-third of their split to

Hazel-Atlas and they were assured they would come out all right because a lot of these people from the Miller Defense Association might come in as licensees and add to, sort of sweeten the kitty?

A. No, all we knew, there were differences and conflicts between Owens and Hazel that both companies wanted to settle in some way. How they did it or why they did it or what the contracts were, we were never advised.

Q. Don't you remember that Owens didn't like the idea of giving up a part of their interest in the fund, namely, the total royalties less the amount you were allowed to keep for expenses?

A. No, I think the contracts show, at least our contracts, that they were willing to do it.

Q. Don't you remember they were assured about coming [fol. 1844] out just as well as they came out, but because it was suggested to them that when Hazel came in the outsiders, particularly the people in the Miller Defense Association, would fall in line?

A. Well, we always wondered whether the outsiders would fall in line or whether they would not. Now, I think the reason they fell in line was because we had received this final decision in the Peiler Plunger case, and they were subject to an injunction; that was a fundamental reason.

Q. Yes, but Hazel-Atlas were the people who could proceed to try to go to a higher court?

A. They so claimed, but our attorneys didn't think they had any basis for it.

Q. Don't you remember in the supplemental agreement they still asserted they might have been able to go ahead?

A. I think that is stated in the agreement, Mr. Isseks.

Q. Now, after you made this arrangement, this so-called settlement with Hazel-Atlas, you thought it important enough to issue a statement to the public, did you not?

A. I have a faint recollection.

Q. Just a faint recollection?

Mr. Isseks: Your Honor, at this time I would like to hand the witness a document which I am going to have marked as Government's Exhibit 150. I believe there was a stipulation or a statement just made yesterday that the final contracts, I think, were executed on the 19th or 20th——

The Court: 21st.

[fol. 1845] Mr. Isseks: —21st of July. Then I have a piece of paper which I am going to show the witness, dated July 21, 1932, purporting to be signed by Hazel-Atlas Glass Company, by J. H. McNash, president, and the Hartford-Empire Company by F. Goodwin Smith, president, and I ask the witness whether he remembers signing that document with Mr. McNash. I will change the question.

Q. My question is not whether you signed it, did you authorize your signature to be placed thereon, and to have the document circulated?

A. I remember such a statement being drawn. Was that published?

Q. Do you remember drawing a statement like that?

A. Yes.

Q. And authorizing your signature thereon?

A. Well, I don't remember whether we signed it, but I would not deny we did. I remember there was such a statement gotten up.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read, please.

Q. Well, don't you remember not only that you authorized the statement but that Mr. McNash did it jointly with you?

A. I think that was gotten up and agreed to, as I remember, by both of us.

Q. And it was publicized, was it not?

A. Some statement was. I cannot tell you whether it was just that or something like that or not.

Mr. Isseks: Subject to correction, I will take from coun-[fol. 1846] sel for the purpose any document which they say was circulated.

Mr. Wall: We have none.

Mr. Isseks: Subject to correction, the witness has said it was something like this, and Your Honor has admitted it. I certainly don't want to offer any document which was not circulated. My associates say this was obtained from one of the subsequent licensees, that piece of paper.

Q. Does it refresh your recollection?

A. My recollection is a little hazy. I remember that we thought it advisable to make an announcement of the consummation of the settlement, and whether that was circulated or not I cannot tell you.

Mr. Isseks: I would like to have it read.

(Government Exhibit 150 read by Mr. Lewis.)

Q. Do you remember who aided in the preparation of that piece of paper, Government Exhibit 150?

A. I haven't the least idea.

Q. You notice that this document says that Hazel-Atlas has acquired a license from Hartford-Empire Company to use its invention in feeders and forming machines, and agreeing to pay the Hartford-Empire Company the standard royalty rate?

A. Correct.

Q. Did you make any announcement to the effect Hazel-Atlas was going to get a split of one-third of all the royalties?

A. I don't think we did.

Q. Did you make any announcement to the effect Owens was going to get a split—using Mr. Carter's expression [fol. 1847] —a split of one-third of all the royalties?

A. Well, we didn't announce the details of the contract, Mr. Isseks.

Q. You didn't tell anybody about the split, ever, did you, until the TNEC hearing?

A. Oh, yes, I testified yesterday that——

Q. Well, I just——

Mr. Fuller: I think he ought to be allowed to answer the question and not be interrupted in the middle of his answer.

Mr. Isseks: I agree with Mr. Fuller.

The Court: If he has anything to add to it, he may.

The Witness: I said yesterday it was generally known that the Owens Company were receiving a substantial sum of money in payment for a license under their patents, I think something to that effect, anyway, and that also the Owens and Hartford contract became open to the public when it was filed as a record in, I think it was, the Hazel-Atlas suit, so that there was no—the public didn't know how much we were paying, but they all knew that Owens was receiving substantial sums of money from us each year.

Q. Did they know Hazel-Atlas was receiving money from you?

A. Well, they eventually knew.

Q. When, eventually?

A. I cannot tell you.

Q. Did they know before the fall of 1938 when the matter [fols. 1848-1849] became public at a hearing before the TNEC?

A. I think they knew we were making payments to Hazel for license rights.

Q. Do you know Mr. Frank Ball?

A. Yes.

Q. Who is he?

A. He is president of Ball Brothers.

Q. Mr. Ball—I may be anticipating a little bit, but I think is becomes very important—became a licensee shortly after you made the Hazel-Atlas contract?

A. In '33.

Q. That is nine months later, March, 1933?

A. Yes.

Q. Mr. Ball was a licensee from March, 1933,—or rather his company,—until the fall of 1938, was he not?

A. Yes.

Q. And paying substantial royalties annually to you, was he not?

A. Yes.

Q. How much, about—half a million dollars a year?

A. Oh, no, no.

Q. Three hundred thousand dollars a year?

A. Well, I wouldn't know. I would have to look it up. I think it is in the record.

Q. Mr. McCallister stated $175,000.00 a year; is that about it?

A. It didn't start off at that rate, but I think it probably amounted to that as the years went on.

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[fol. 1850] Q. Mr. Smith, did you tell anyone connected with Ball Brothers, prior to the fall of 1938, that Owens and Hazel-Atlas were sharing in the royalties received by your company?

A. I don't remember that I did except I do remember at one time Mr. George Ball asked me if money didn't flow from Hartford to Owens, and I said "Yes", and made him some kind of an answer. I don't think they ever were acquainted with the details of the contracts.

Q. Approximately when did you tell that to Mr. George Ball before he signed the contract with you in '33?

A. I think during the negotiations.

Q. Did you tell him that Hazel-Atlas was going to participate in it?

A. I don't remember, Mr. Isseks.

Q. Your answer is, I believe, you told him money was flowing from Hartford to Owens; is that correct.

A. Yes.

Q. Did you ever tell him Hazel-Atlas was sharing?

A. I don't remember of telling him that.

Q. Now, I hand you a book here—I am not going to mark [fol. 1851] it—just to refresh your recollection. At the bottom of page 560, I believe the Mr. Ball referred to is not Mr. George Ball but Mr. Frank Ball, his brother, and I ask you whether that refreshes your recollection as to whether or not you ever told anyone at Ball Brothers prior to the fall of 1938?

A. Oh, yes, because Mr. George Ball and Mr. Frank Ball were the ones with whom we negotiated in '33.

Q. Did you tell it to Mr. Frank Ball?

A. I don't think I did.

Q. You say you think you told it to Mr. George Ball?

A. Yes.

(Short recess taken.)

[fol. 1852] (After morning recess.)

Mr. Isseks: I should like to see if we cannot clear this up.

Q. Do I understand you to say that you told Mr. George Ball about the Owens division, but did not tell him the amount or proportion?

A. I did not tell him the amount.

Q. You never told Mr. Frank Ball?

A. I do not ever remember discussing it with Mr. Frank Ball.

Q. Do I understand you correctly to say you did not tell Mr. George Ball that Hazel-Atlas was participating?

A. I don't remember telling him.

[fol. 1853] Q. I will repeat the question. Did you tell any licensee, existing licensee, as of July 21, 1932, and corporations that became licensees thereafter up to the present time, the fact that Hazel-Atlas was participating in the royalties—and of course my question is as of the disclosure before the TNEC, between July 21, 1932, and the fall of [fol. 1854] 1938?

A. I don't remember, Mr. Isseks, giving anybody details of those contracts.

Q. My question is whether you told them that Hazel-Atlas was sharing in the income, not the amount?

A. I think we told them, not generally, but there were certain—it certainly was known that we were making some kind of payment to Hazel-Atlas, the details of which I don't think we ever told.

Q. You say it was generally known; whom did you tell it to?

A. I don't think I told it to anybody, Mr. Isseks.

Q. Mr. Underwood's company, Knox Associates, became a licensee shortly after the contract with Hazel-Atlas?

A. That is correct.

Q. Subject to correction, in recent years they paid you around $450,000 in royalties?

A. Recent years, yes.

Q. 1935, 1936, and 1937?

A. I cannot tell you. It is a very large amount of money.

Q. They are the fourth largest licensee, are they not, in payment of royalties?

A. The fourth or fifth.

Q. Forget about the splits you had with Owens and Hazel.

A. Yes, sir.

Q. Hazel-Atlas does not pay anything, net?

A. Anchor-Hocking.

[fol. 1855] Q. And then Knox Associates, the group?

A. I think that is correct.

Q. You participated in the negotiations with Mr. Underwood, did you not?

A. No, I did not participate in the negotiations that led up to their taking a contract.

Q. Did you ever tell Mr. Underwood that Hazel-Atlas was sharing in the royalties prior to November, 1938?

A. I don't think I did.

Q. As far as you know, did anybody in your company tell Mr. Underwood?

A. I just would not know.

Q. Another licensee that came in later on was Brockway, was it not?

A. That is correct.

Q. Did you tell Brockway, or anybody connected with Brockway, that Hazel-Atlas was participating in the royalties?

A. I never did.

Q. Did anybody in your organization tell you they told them?

A. I don't remember that they did.

Q. Another licensee that came in later on was Universal, was it not?

A. Yes, sir.

Q. Did you tell Universal?

A. No, sir.

Q. Did anybody in your organization tell you that they told Universal?

[fol. 1856] A. I don't remember that they did.

Q. Another licensee——

Mr. Haight: If Your Honor please, why should we go through this seriatem, when he stated that he cannot remember having told anyone himself? The witness stated that.

Mr. Isseks: He did not state that. He said generally it was known. I want to find out who knew.

The Witness: I thought I said that I don't remember personally telling anybody the details of both of those contracts.

Q. Except you said you told Mr. George Ball?

A. Not the details.

Q. Did you tell them generally—did you tell anybody other than Mr. George Ball—and you did not tell him about Hazel-Atlas—did you tell anybody generally that Hazel-Atlas was sharing, or getting a split, or getting a portion—any language you want to use—to indicate that Hazel-Atlas was participating in the royalties that that licensee was paying?

A. I don't remember.

Q. Except for Mr. George Ball, you have testified, I think my recollection is you said you told Mr. George Ball before the contract was signed that there was money flowing—I think you used the word "flow"—from Hartford to Owens. Now did you tell any other then licensee, or subsequent licensee, of the participation by Owens?

A. I think that was generally known. The contract was on [fol. 1857] record. In fact, most of our licensees thought that Owens owned us.

Mr. Isseks: Your Honor, I have refrained right along, and hope to refrain from asking the witness to give me responsive answers. I don't think the answer is responsive. My question is whether or not he told anybody. His answer is that it was generally known. I ask Your Honor to direct the witness to give me a responsive answer.

The Witness: I will be very glad to do it. I am not trying to not give you one.

Mr. Isseks: That is all right. Witnesses do it.

The Witness: I do not want to do it. It is not my intention.

Q. Please tell me, other than George Ball, whether you personally told any licensee that was a licensee in 1932, July, between that time and the fall of 1938, did you personally tell any licensee that Owens was either sharing, or getting a split, or that money was flowing from Hartford to Owens, in connection with the payment of royalties?

A. You mean Hazel?

Q. I say Owens—other than George Ball—did you tell anybody?

A. I could not tell you whether I did or not.

Q. What is your best recollection?

A. I do not distinctly remember telling any definite party.

Q. Looking at Government's Exhibit No. 150, I ask you what was the purpose of issuing an announcement signed by you and Mr. McNash?

[fol. 1858] A. I had assumed at that time that both companies would like to make an announcement of such an important termination of litigation, et cetera.

Q. Was not one of the purposes of the announcement to use it as a basis for getting in the outsiders?

A. I don't recollect that it was.

Q. Do you not remember, shortly after you made this contract with Hazel-Atlas and with Owens, which resulted in a split of royalties, to use Mr. Carter's words, your company immediately started negotiations with the next largest outsider, namely, Knox Associates?

A. Soon after that, that is correct.

Q. Do you not remember you made a contract with Knox Associates shortly thereafter?

A. That is correct.

Q. Did you participate in those negotiations at all?

A. I don't think I did.

Q. Were you not consulted at all about it?

A. Probably.

Q. What is your best recollection?

A. Well, I think that, although I don't remember the particular things that happened; I think that probably I was consulted. I was not negotiating with Knox or Underwood. That was done by other members of our company.

Q. Were the Knox Associates, so-called Miller users?

A. Yes, sir.

Q. Do you not remember that through the years 1926 to [fol. 1859] 1928, inclusive, at various times consideration was given by your company and Owens as to how to get the Miller users in as licensees?

A. That is correct.

Q. You had conferences on that matter with Owens?

A. I did.

Q. When the question of Knox Associates becoming licensees came up, did you take that up with the Owens people?

A. I have no recollection.

Q. Anybody tell you in your organization whether or not it was taken up with the Owens people?

A. Talking about 1933 or 1932?

Q. Talking about 1932.

A. No, not that I remember, Mr. Isseks.

Q. You do remember that a contract was made with the Knox people?

A. Yes, sir.

Q. Do you remember having any discussions with the Knox people as to the fields in which they would be limited if they came in?

A. I personally did not. Those discussions naturally took place. If they were going to take a license they would want to know what their license would be.

Q. Do you remember whether or not you limited them as to the number of feeders they could use?

A. I think we did.

Q. I want to go back. Was Owens limited in any fields of ware?

[fol. 1860] A. No, sir.

Q. Was Hazel-Atlas limited in any fields of ware?

A. Very few; some, yes.

Q. When you came to Knox, though, you limited them in fields of ware, did you not?

A. That is true.

Mr Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 151 what we have here furnished us by Hartford-Empire: a copy of the agreement between Hartford-Empire Company and Knox Glass Company, and others dated August 25, 1932. It has some letters attached to it, but I should like to have the whole document marked as one exhibit.

The Court: That is the Hartford and Knox Agreement?

Mr. Isseks: Yes, Your Honor. Mr. Philbin has made a suggestion. The contract itself is signed by the Knox Glass Bottle Company; Pennsylvania Bottle Company; Marienville Glass Company; Wightman Bottle & Glass Manufacturing Company; Oil City Glass Bottle Company; and in each case it is signed by Mr. Underwood, except in the case of the Knox Glass Bottle Company, when it is signed by Mr. McDowell; and then it is signed by Hartford-Empire by Roger M. Eldred.

I offer the contract, only. There are a lot of pieces of paper attached to it, given to us by Hartford. I am told they are amendments; and perhaps we ought to just read [fol. 1861] them. I am reading from the bottom: May 8th, 1936, from Hartford to Knox Glass Bottle Company; January 25, 1938, the same people; in each case there is an acceptance by Knox Glass Bottle Company; then there is one, May 7, 1938; there is one November 2, 1938; October 13, 1939; November 9, 1939; December 7, 1939; January 18, 1940; and February 5, 1940.

The Court: Those are all amendments?

Mr. Isseks: They are all, I am told by my associate, amendments; and in each case there is a letter going from one party to the other; and then accepted by the other. They are all attached to the contract. I offer all the pieces of paper.

The Court: Who is Mr. Underwood?

Mr. Isseks: I will ask the witness.

Q. Who is Mr. Underwood?

A. President of the Knox Glass Bottle Company.

Q. He is the man, as far as you know, your company had the negotiations with?

A. That is correct.

Mr. Haight: If Your Honor please, we make the same objection to the receipt of this paper as we made to the testimony in reference to whether he had notified anyone about the Hazel-Atlas contract; on, generally, the same grounds, and I will not repeat the objection as to the testimony of a similar character hereafter, if that is understood.

[fol. 1862] The Court: Your objection may be noted.

Mr. Haight: Mr. Isseks, do you mind my asking Mr. Mr. Smith just one question?

Mr. Isseks: Sure.

Mr. Haight: I want to find out whether his answer a moment ago was as I understood it, or whether he intended to make any limitation:

Mr. Haight:

Q. You stated, as I understood it, there were no limitations as to ware in the Owens contract?

Mr. Isseks: I intended to straighten that out.

The Witness: There were Corning exclusions.

Q. And, similarly, Hazel-Atlas was excluded from the Corning field?

A. Yes, under their exclusion.

Mr. Haight: As a matter of fact, there were other conclusions in the Owens contract, were there not?

A. That is correct.

The Court: Government's Exhibit No. 151 will be admitted, over objection.

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[fol. 1863] Q. Do you remember, Mr. Smith, that Mr. Underwood's people wanted the right to manufacture fruit jars?

A. Yes, I think that is true.

Q. And you turned them down?

A. Did we not restrict them as to quantity?

[fol. 1864] Q. You did not allow them to manufacture fruit jars, did you?

A. I thought we did.

Q. The exclusion here says, "(g) Tumblers, fruit jars for domestic (household) use;"—you are thinking of milk bottles—you notice it excludes there fruit jars?

A. If that was in the contract exclusion, we did.

Q. Do you not remember that the Knox people wanted the right to manufacture milk botttles unrestrictedly, and that you permitted them to manufacture milk and cream bottles, provided—and I am now reading from Schedule B:

"Milk and cream bottles provided, however, that the total number produced by Knox and/or said affiliates on said leased machinery shall not exceed 75,000 gross in any one calendar year"?

A. I think that is true.

Q. In any settlement of money that came from the Knox Associates, did Owens and Hazel-Atlas share in that settlement?

A. Yes, I think they did. I am not sure about Hazel-Atlas.

Q. Did one or both of them share?

A. I think probably both shared.

Q. That is your best recollection?

A. Yes, sir.

Q. Do you remember, Mr. Smith, there was a company [fol. 1865] known as the Lamb Glass Company?

A. That is correct.

Q. And that company was one of the defendants in one of these Ohio lawsuits that we talked about yesterday?

A. That is correct.

Q. Do you remember that they filed a petition for a writ of certiorari from the Sixth Circuit Decision?

A. I have forgotten about it.

Q. Do you remember entering into negotiations with the Lamb people with regard to the disposition of that lawsuit, and their taking a license under your machinery?

A. There were such negotiations.

Q. Did you participate in them?

A. I remember I did, at one meeting.

Q. Do you remember that they took a license before you got through?

A. Yes, sir.

Q. Do you remember whether or not they paid you any money damages?

A. I have forgotten that.

Mr. Isseks: Your Honor, at this time I should like to offer documents, photostatic copies of documents coming from the files of Hartford. I have no other copies, Your Honor. I should like to just offer the two documents. One is a general agreement between Hartford-Empire Company and the Lamb Glass Company, with an attached bill of sale, dated November 10, 1932; and there are some ex- [fols. 1866-1867] hibits to the contract which are part of the documents given us. The contract is signed by Roger M. Eldred, general manager, on behalf of Hartford-Empire; and by the Lamb Glass Company, by R. M. Lamb, president. I should like to have that marked as Government's Exhibit No. 152.

I should like to have marked as Government's Exhibit No. 153 the document of November 10, 1932, marked "Settlement for Damages", signed by the same parties. It is between Hartford-Empire and the Lamb Glass Company, and signed by the same people, namely, Mr. Eldred on behalf of the Hartford-Empire as general manager; Mr. R. M. Lamb on behalf of the Lamb Glass Company.

I offer Government's Exhibits Nos. 152 and 153 in evidence.

The Court: They will be admitted, over objection.

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[fol. 1868] Q. Now, Mr. Smith, do you remember there was another so-called Miller user named Universal Glass Products Company?

A. Yes.

Q. Do you remember participating in negotiations with them, causing them to get a license?

A. I think I did not.

Q. Well, you signed a contract?

A. Yes.

Mr. Isseks: At this time, Your Honor, I would like to have marked as Government's Exhibit 154 a contract, photostatic copy of which has been furnished us by Hartford dated September 15, 1932, general agreement, Hartford-[fol. 1869] Empire Company and Universal Glass Products, signed by the witness on behalf of Hartford and R. S. Davis on behalf of Universal. There is attached to this document a number of pieces of paper as furnished to us. One is a bill of sale, and there is a Schedule A and B, and there is a C, and letter amendments, photostatic copies of the originals, one dated December 7th, 1932, one dated November 7th, 1933. Then there are copies of original letters of earlier dates, February 7, '36, and some in '37, two pages. I offer the document as one exhibit, 154.

Mr. Williams: Did you say it includes feeders?

Mr. Isseks: It includes everything. It includes license, a bill of sale of Miller Feeders.

The Court: It may be admitted, over objection.

Mr. Isseks: I am not going to read the document but in Section 1 there is a consideration for releasing of its claim by Hartford against Universal. Universal agrees to pay to Hartford $40,000 in the following manner. Then it lists the way of paying it. Schedule B is permitted wares, the same as the other. I think it is almost identical with the previous one and the one before.

Q. Now, Mr. Smith, do you remember that there was a non-licensee at the time of the execution of these contracts in July, 1932, by the name of Maywood Glass Company somewhere on the west coast?

A. That is correct.

Q. Did you have anything to do with the negotiations in [fol. 1870] connection with that matter?

A. No. I think another representative went to the coast.

Q. Of course, after you made that contract with Hazel-Atlas you were seeing more of Mr. McNash, were you not?

A. No. I have seen very little of him.

Q. I am coming to the time you saw him. You had some correspondence with him, didn't you?

A. Yes.

Q. Don't you remember corresponding with him in connection with the situation relating to both the Maywood Glass Company and another glass company on the west coast called the Latchford?

A. I probably did.

Q. What is your best recollection?
A. Well, I probably did.

Mr. Haight: Show him the letter, if you have it.

A. Show me the letter if you have it.

Mr. Isseks: I think I am entitled to exhaust the witness's recollection. Perhaps I can get more out of him that way than the other way.

Mr. Haight: I don't think that is a fair statement. I think you have gotten everything the witness' recollection has possibly allowed him to give.

Mr. Isseks: It is for the Court to decide.

The Court: Proceed with the examination.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 155 a copy of a letter purporting to [fol. 1871] have been written by Mr. McNash, president of Hazel-Atlas, dated November 16, 1932, to the witness. This copy, Your Honor, has been certified as a true copy, as a genuine document by Hazel-Atlas Corporation, and I will ask the witness whether he received that in the regular course of business. I have the original here. Perhaps a photostat of the original would be the best evidence. I will have it substituted.

The Court: I don't believe I have a copy of that.

Mr. Isseks: I believe you have. I am going to have substituted a photostatic copy of the original rather than the copy. That was furnished to me by Mr. Wall.

Q. Now, Mr. Smith, do you recognize the signature on the photostat of the original?
A. Mr. McNash's.
Q. Did you receive that in the regular course of business?
A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.
Mr. Emery: Objection.
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have it read, Your Honor.

(Reading Exhibit 155.)

Q. Now, Mr. Smith, did you send a representative to the coast?
A. Yes.

[fol. 1872] Q. Who did you send?

A. I think probably it was Mr. Pease.

Q. Who was he?

A. He was assistant-treasurer and handled our license sales and licenses.

Q. You notice in the second paragraph Mr. McNash says that Maywood is disturbing the situation considerably?

A. Yes.

Q. How was Maywood disturbing the situation?

A. The letter goes on to say, doesn't it, they consider him a price cutter?

Q. What interest did you have as a licensing company in the fact some company was manufacturing glassware on the west coast and cutting prices against Hazel-Atlas?

A. Not at all. Our interest was to get them to pay royalties whether they cut prices or not.

Q. Why was Mr. McNash telling you about it?

Mr. Philbin: The letter merely says McNash is reporting the conversation told him by other people.

The Court: I think I will overrule the objection.

Q. How did your associate——

Mr. Haight: Wait a minute. Wasn't there a question that was not answered?

(Question read.)

A. I assume that letter was just giving a general picture of how he found conditions on the coast.

Q. That wasn't the first time someone complained to you that a non-licensee was a price cutter?

[fol. 1873] A. No.

Q. That was a common thing?

A. I would not say it was a common thing.

Q. It happened more than once?

A. Oh, yes.

Q. Dozens of times?

A. I don't know as to that.

Q. Anyway we will come to that. Anyway you sent Mr. Pease out?

A. Yes.

Q. Of course Hazel-Atlas was a manufacturer of glassware?

A. Yes.

Q. You knew that?

A. Yes.

Q. And Owens was a manufacturer of glassware?

A. Yes.

Q. You were not a manufacturer of glassware?

A. No.

Q. You don't even manufacture machinery, I believe you testified that all you did was have somebody make it for you?

A. Well, with the exception of very small articles.

Q. Of course Hazel-Atlas had a company—a subsidiary out on the west coast, didn't they?

A. They had a plant out on the west coast.

Q. So far as you know they were competing commercially with most of these companies named here?

A. Yes.

[fol. 1874] Q. Didn't Mr. McNash tell you that he did not like price cutting on the west coast, forgetting that letter for a moment?

A. No. Whatever Mr. McNash said is right in that letter.

Q. Didn't Owens have a plant on the west coast too?

A. Yes.

Q. And Latchford and Maywood were competing with Owens too, weren't they?

A. Oh, yes.

Q. And these gentlemen, Owens and Hazel-Atlas, were not interested in competition, were they?

A. Any manufacturer would be very much interested in competition.

Q. But they didn't like price cutting competition, did they?

A. I assume they would not, Mr. Isseks.

Q. What is your best recollection as to what Mr. Levis ever told you about price cutting competition on the west coast?

A. I do not remember a thing.

Q. You don't?

A. No.

Q. Did Mr. McNash ever tell you about price cutting on the west coast other than what is in this letter?

A. Not that I remember.

Q. Mr. Pease made a deal out there, didn't he?

A. Yes.

Q. And it came to your attention in due course, didn't it?
A. It did.

[fol. 1875] Mr. Isseks: At this time I would like to offer in evidence two documents. One is dated Settlement Agreement, 16th day of December, 1932. This protostat was furnished us by Hartford. It is signed by Hartford-Empire Company, by Alfred M. Pease, assistant general manager, and by Benjamin H. Koons, president of Maywood Glass Company.

The Court: That is Exhibit 156?

Mr. Isseks: That is right. The next one is Exhibit 157 and I will describe it. The next one, Your Honor, is on a printed form, 157, License and Lease Number, and it says, subject to correction, it is either B or HF-9, from Hartford-Empire Company.

Col. Brown: BF-9.

Mr. Isseks: Mr. Brown says it is BF-9, from Hartford-Empire Company, that is printed, then typed in Maywood Glass Company, written in Los Angeles, California. Dated December 16th 1932. This, Your Honor, covers a number of pages and is signed by Mr. Pease on behalf of the lessor and by Mr. Koons on behalf of the Maywood Glass Company.

The Court: What is this document; is it distinguished from the settlement agreement?

Mr. Isseks: Yes, sir; it is a different document. It is a license and lease on a printed form.

Q. I am going to ask the witness about the form. This is a printed form of licenses and leases used by your company during the year 1932?
[fol. 1876] A. Correct.

Q. That document is filled in at various places where the form does not cover it?
A. Yes.

Mr. Isseks: I offer Government's Exhibits 156 and 157.

The Court: They may be received.

Mr. Sayles: Over objection?

The Court: That is right.

Mr. Isseks: Your Honor, I understand the settlement agreement provides for the payment by Maywood of $3,000 to Hartford for past infringement, and there is a note in connection with it and a bill of sale of two glass feeders known as Bethel Maywood Feeders.

Exhibit 157, Your Honor, has been identified as a form of license and lease.

Q. I will ask the witness, it is a license and lease of feeder, isn't it?
A. Yes.

* * * * * * *

[fol. 1877] A. Those exclusions are printed in all the contracts.

Mr. Isseks: I think the witness said the exclusions were printed all the time in the formal leases.
The Witness: Yes.

Q. Now, Mr. Smith, don't you recall you also made some kind of arrangement with Latchford?
A. Yes.

The Court: We will suspend here until two o'clock.

(Noon adjournment.)

[fols. 1878-1879] At 2 o'clock p. m., Wednesday, March 12th, 1941, the trial was resumed.)

Q. Do you remember, Mr. Smith, that as part of the trip Mr. Pease made to the Coast he also made a settlement with Latchford Glass Company?
A. That is correct.
Q. Did you have anything to do with the negotiations?
A. No.

Mr. Isseks: At this time I would like to have marked, first the so-called setlement agreement dated December 7, 1932, between Hartford-Empire Company and Latchford Glass Company. The contract is dated December 7, 1932. It is signed by Mr. Pease, as assistant general manager, Mr. Latchford as president of Latchford Glass Company, three pages, and has attached to it a bill of sale of one page bearing the date 12/7/32, and I offer that as the next exhibit, 158.
The Court: Who signs for Latchford?
Mr. Isseks: Mr. Latchford as president.
Mr. Middleton: Objection.
The Court: It may be admitted over objection.
Mr. Isseks: Your Honor, I offer as the next exhibit, 159,

photostatic copy of what is designated as a general agreement between Hartford-Empire Company and Latchford Glass Company, dated December 7, 1932, signed by Mr. Pease on behalf of Hartford and H. J. Latchford as president of the Latchford Glass Company. I offer that in evidence.

Mr. Middleton: Objection.

The Court: It may be admitted over objection.

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[fol. 1880] Q. Now, Mr. Smith, did you participate in the negotiations which resulted in the Brockway Company's taking a license?

A. No.

Q. Did you have any correspondence leading up to that matter?

A. That I don't remember.

Q. See if I can refresh your recollection. I would like to have marked, a photostatic copy of an original letter, from the witness to I. J. Collins, dated July 27, 1932, and marked "Personal", as Government's Exhibit 160. I understand there is a stipulation that a copy of this letter was also received by Mr. McNash, and that stipulation is on page 6 of the stipulation between the Government and Hazel-Atlas; Anchor-Hocking has stipulated the photostat that has been marked as an exhibit is a copy of a genuine document, from their files.

Q. First of all, Mr. Smith, is that your signature on Exhibit 160?

A. It is.

Mr. Isseks: I offer that in evidence.

Mr. Wall: This is a photostat of the one from Hazel-Atlas?

Mr. Isseks: No, from Anchor-Hocking. Photostat of the original.

Mr. Fuller. I assume this is offered and received under the same limitation as to proof of what somebody beside the witness said. We make only the general objection.

The Court: It will be admitted over objection.

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[fol. 1881] Mr. Isseks: All right.

Q. Now, you heard the letter read?

[fol. 1882] A. I did.

Q. The Mr. McCallister referred to is the same gentleman who represents Ball Brothers?

A. I think so.

Q. You say in your letter to Mr. Collins—Mr. Collins at that time was a director of Hartford?

A. He was.

Q. Also head of the Hocking Glass Company?

A. Correct.

Q. So there won't be any confusion, he is also head of the Anchor-Hocking Glass Company?

A. Correct.

Q. You say to him, at the end of the first page of the letter, "I think you should talk with Harrison"—that means Mr. McNash?

A. Yes.

Q. —"for the purpose of determining whether the output would be better in the hands of General or in the hands of Hazel?" Whose output?

A. Brockway's.

Q. What interest did you have whether Brockway's output was in the hands of General or in the hands of Hazel?

A. Well, as I remember at that time the Company was in financial trouble and there was a question of whether they could go on, and several people, I think—I cannot tell you who they were—were interested in buying them out. Now, that is about all I remember.

Q. Anybody come to see you about it?

[fol. 1883] A. Not that I remember. I must have talked with somebody about it.

Q. The first sentence in your letter says, "Harrison McNash telephoned me today about some other matters and brought up the question of Brockway."

A. He telephoned. You asked if he came to see me. I don't remember his coming to see me.

Q. Do you remember his telephoning you?

A. I assume he did.

Q. What did he tell you when he telephoned you?

A. Whatever I said in that letter.

Q. The letter says he called you to tell you Brockway had hired Mr. McCallister, who was retained to fight any injunction proceedings.

A. That may be true.

Q. Weren't you talking about trying to enjoin Brockway?

A. Why, yes, because under our patents—they were infringing our patents.

Q. That is the position you took?

A. Yes.

Q. They took the position they were not infringing?

A. Correct. Well, I don't know——

Mr. Haight: There is a little poetic license. You said he called you up to tell you. The letter says, "he confirmed a report which we had seen, namely, that McCallister has been retained by the Brockway Bottle Company."

Mr. Isseks: All right.

Q. Did he tell you that over the telephone when he con- [fol. 1884] firmed the report?

A. I have no reason to doubt it.

Q. He used words which stated in substance, "I confirm the report"?

A. No, you have me mixed up.

Q. What did he say which resulted in your saying to Mr. I. J. Collins, "he confirmed the report"?

A. Well, I suppose there was a report around Brockway had retained Mr. McCallister.

Q. And Mr. McNash told you that?

A. It is so stated there.

Q. Now, who was "General"? You are writing to the president of the Hocking Glass Company, who is also a director of your company. You say the output would be better in the hands of "General." Who is "General"?

A. General Glass Company.

Q. What connection did Mr. Collins have with General Glass Company?

A. He was part owner of that company.

Q. He was a 50% owner of the company?

A. I think that is correct.

Q. "Hazel", of course, is Hazel-Atlas Company?

A. Correct.

Q. Now, you say on the second page, "I think we could convince the Brockway Bottle Company that we had no desire to use the big club for the purpose of closing them up." Is that what counsel call "poetic license"?

A. Well, our club was our patents.

[fol. 1885] Mr. Haight: No, I call poetic license when you draw an inference from the letter and incorrectly state what the letter said. I don't think you did it on purpose, that is the reason I called it "poetic license."

Q. What did you have in mind by the "big club"?

A. Well, we would have our patents, Mr. Isseks, and we could have sued them. We had preferred to have them come in automatically and take a license than go through another lawsuit with them.

Q. You said you have a man who knows his ground pretty well, "and I think we can do some missionary work." Who is this gentleman?

A. I haven't the least idea.

Q. Wait a while. You wrote this letter in 1932?

A. I admit it.

Q. Don't you remember who the man was?

A. No; if I did, I would tell you.

Q. That was Mr. Hatch, wasn't it?

A. It might have been.

Q. He was the "Hatchet Man," wasn't he?

A. Well, it might have been Mr. Hatch.

Q. Wasn't he the man that went around and did these things, missionary work?

A. Not all the time.

Q. He did it part of the time?

A. Yes.

Mr. Goodrich: Wait a minute, I think your "hatchet man" wants to ask you something.

[fol. 1886] Q. What was the nature of Mr. Hatch's duties?

A. Well, he primarily worked in our patent department.

Q. Didn't he go round and do this kind of missionary work with important infringers?

A. He did to some extent.

Q. Who else did, Mr. Smith?

A. I don't know.

Q. There is a reference in this letter to Mr. Warner. Where Mr. Warner was previously mentioned, it should have been Warren?

A. Correct. He was head of the Brockway Company. That is the first time I met him.

Q. And you say to Mr. Collins, "Will you be good enough to take this matter up with Harrison, so that fairly definite plans can be formulated?" Definite plans as to what?

A. Well, if anybody was going to buy them out, buy Brockway out, we naturally would want to know it. If they were not going to buy them out, and they would not take a license, we would have brought suit. I wanted to know what the situation was.

Q. Did Mr. Collins ever report back to you?

A. I don't know, Mr. Isseks. I assume he would.

Q. Do you remember what he told you?

A. I don't even remember he did.

Q. Did Mr. McNash report back to you.

A. That I cannot tell you.

Q. Then you say, "I am sure Brockway's attitude will be somewhat mellowed when either Underwood accepts a [fol. 1887] license or injunction proceedings are brought against him." You meant Underwood——

A. Underwood and Knox Glass.

Q. After Underwood took the license, Brockway did get mellow?

A. I haven't the date. If it was after that, I assume they did.

Q. They did take a license?

A. They did.

Q. After Underwood did?

A. That is correct.

Mr. Isseks: Your Honor, at this time I would like to offer this document, photostatic copy, which is given us by Hartford, and says "General Feeder Agreement, Settlement Agreement, Bill of Sale Hartford-Empire Company—Brockway Machine Bottle Company," dated January 23, 1933, and is signed by R. L. Warren, president of the Brockway Machine Bottle Company, and has attached to it certain schedules. I am not going to offer the supplemental agreement, because we will come to that in another connection. I am going to offer the original agreement and schedules 1 to 8, inclusive, which is one exhibit. I think the record shows the agreement from the Knox people was in August, 1932.

The Court: Does that supplemental agreement include the license?

Mr. Isseks: This contract includes the license, and I am going to refer to certain phases after the Court admits it in evidence. You admit it?

The Court: Yes, under the usual objection.

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[fol. 1888] Q. Well, Mr. Smith, by the time you signed that contract, January 23, 1933, you had some of the out- [fol. 1889] siders in, didn't you?

A. That is right.

Q. It wasn't long after that you got one of the biggest outsiders in, namely, Ball Brothers?

A. That is correct.

Q. I will come back to that in a few minutes. From time to time thereafter other outsiders came in?

A. Correct.

Q. Such as Fairmount Company?

A. Correct.

Q. Tygart Valley?

A. Correct.

Q. Do you have any present recollection as to when the last outsider came in?

A. No, I haven't.

Q. How many outsiders are still out? I think you testified already.

A. Three.

Q. Isn't there a fourth one? Aren't there four?

A. Kerr is one. Obear-Nester.

Q. Reed—that is three?

A. Yes.

Q. And Jeannette?

A. Jeannette, that is right.

Q. Four outsiders still out?

A. That is right.

Q. Don't you remember, Mr. Smith, that just a very brief [fol. 1890] time after you made your contract with Hazel-Atlas there were more problems coming up in connection with the interpretation of the contract?

A. Yes, one problem.

Q. Do you remember now what those problems were?

A. I remember one problem.

Q. Give us your best recollection.

A. That was a question of whether what they call the plug feeder infringed our patents.

Q. Don't you remember there was another problem, namely, that if you didn't get a determination within a certain period of time in another circuit as to the validity of your patents, they had an "out"?

A. That is correct.

Q. And do you remember there were considerable conferences and discussions about that?

A. Yes, that is true.

Q. Do you have any general recollections on it?

A. Well—the theory, as I remember it, was that we had to bring suit by '34 and we thought that was too short a time.

Q. If you didn't bring suit and the main agreement fell to the ground, then Hazel-Atlas didn't have to pay any royalties, isn't that right?

A. No. I don't think that is as I remember it.

Q. What is your recollection?

A. If we didn't bring suit by a certain period, which I think was by '34, they had a right to cancel if they saw fit.

Q. Perhaps I can refresh your recollection, then, at this time.

[fol. 1891] Mr. Isseks: I would like to have marked a photostatic copy of a letter written by the witness on January 10, 1933, to Mr. Amory Houghton, president of the Corning Glass Works. The photostat that is being offered is a photostat of the original and the genuineness has been stipulated by Corning Glass Works.

Q. I ask you, Mr. Smith, whether the signature thereon is your signature?

A. It is.

Mr. Isseks: I offer it in evidence, as Government Exhibit 162.

The Court: It may be admitted over objection.

(Government Exhibit 162 read.)

Q. Now, I hand you Government's Exhibit 162. You heard it read, did you not?

A. I did.

Q. Now, you say at the end of the first page that "when I had breakfast with Mr. McNash last Thursday morning, I casually called his attention to the fact the Hazel-Atlas contract as drawn probably might prove very embarrassing to Hazel and to Hartford, and that it might easily create a situation whereby Hartford would be forced to run risk of upsetting the entire applecart, to the detriment of all parties concerned." I ask you this question: What "applecart"?

A. Well, as I remember this, the infringing manufacturers were taking a license, doing it automatically without being sued, and we did not wish to bring another suit under the Peiler Plunger Patent, as long as the industry in gen- [fol. 1892] eral were acknowledging that patent and taking a license.

Q. What was the "applecart", is what I am trying to get at?

A. Well, my guess—and it is purely a guess——

Q. No, I don't want a guess. You wrote it. I didn't write it. What was the "applecart"?

A. Well, I think the thought in my mind was this: If we were forced, just because of the Hazel contract, to bring another suit under that Peiler Patent in another district, and, perchance, that judge in the other district should have made a different ruling or given a different decision, then we would have been forced to go to the Supreme Court, and we had had about all the litigation we wanted or could stand, and if we could negotiate and get licensees, we certainly would prefer to do that rather than to bring another suit under the Peiler Patent.

Q. Wasn't the "applecart" this nice, big, fat juicy sum of royalties that the whole industry was paying and you three were splitting three ways?

A. I don't think that that was so much in my mind then. What was in my mind, I think, was that it might upset the patent situation. If it did, eventually, then that naturally would spoil our income.

Q. If you lost your patent suit, Hazel would not have to pay any money and Owens would not have to pay any money?

A. That is correct.

Q. You said "upsetting the entire applecart to the detriment of all parties concerned"?

A. That would be to the detriment of all parties con- [fol. 1893] cerned. It would be to our detriment, our licensees' detriment, Owens' detriment, Hazel's detriment.

Q. You mean if they didn't have to pay royalties it would be to their detriment?

A. Yes, if our patent structure fell, of course.

Q. If they didn't have to pay royalties why would it be to their detriment?

A. Well, we had other minor patents.

Q. How much royalties did you collect in the year 1940, approximately?

Mr. Haight: That has all been gone over.

Mr. Isseks: The total royalties, I certainly never asked that question.

Mr. Haight: The three of them? What difference does it make?

The Court: I think I would like to hear the question answered.

Q. Approximately how much royalty did you collect in 1940?

A. 1940, about six million.

Q. For the sake of the record, I just want to know—I suppose four or five years ago it was five million or four million?

A. Yes, a little over four—four and a half something.

Q. My question is bound in with Hazel and Owens, and we are interested in the royalties collected from the other licensees.

Mr. Middleton: We object.

The Court: Overruled. He may answer, if he knows.

[fol. 1894] A. No; I thought the thing you were interested in was what payments they collected through our divisible income.

Q. All right. That is what I wanted to bring out. Now, Mr. Smith, this discussion went on regarding the difficulties you were having for more than just a short period of time?

A. I don't know about that.

Q. I mean this problem about whether or not Hazel could get out from under within a certain period of time, to 1934?

A. There were conferences right along. There were a few conferences, I think.

Q. Now, do you remember during this period there was also a question raised by Mr. McNash about his right to manufacture milk bottles?

A. Yes.

Q. And he took it up with you?

A. Correct.

Q. And do you remember that you said to him or he said to you, it all depends on what Mr. Levis does?

A. I don't happen to remember that.

Q. Well, let's see.

Mr. Isseks: Your Honor, at this time I would like to have marked, a document, photostat of an original, dated March 7, 1933. It has got a stamp on it, "Property of Hartford-Empire Company. Must be kept in vault. Vault No."—something—I can't figure it out—signed by the witness as president, addressed to Mr. McNash, and has hand-writing at the bottom which I will have identified, but purports to [fol. 1895] be approved, and typewritten "Approved Hazel-Atlas Glass Company by (handwriting) J. H. McNash, president", dated March 9, 1933; there is handwriting over the "Approved" which I will have the witness identify. I would like to have it marked as Government's Exhibit 163.

(So marked.)

Mr. Haight: I was wondering, before you pass to another subject, in view of His Honor's statement that he would like to have the witness answer the question about the amount of royalty, whether you should not also ask the witness what the net was, what they got in 1940?

Mr. Isseks: You mean before they split or after they split?

Mr. Haight: There was only one split then, because Owens was out.

Mr. Isseks: Maybe you better ask him.

Mr. Haight: What was the net?

The Witness: On divisible income?

Mr. Haight: Yes, on divisible income.

The Witness: Well, whatever the feeder and former royalties amounted to, which were less than our total royalties, less than six million; there was a deduction of $850,000.00.

Mr. Haight: I wanted to get at what was the amount you had net, Hartford had net, and the amount that was paid to Hazel and over and above what Hazel paid to Hartford.

The Witness: Well, the amount paid to Hazel over and [fol. 1896] above what Hazel paid Hartford, I think, was around $400,000.

Mr. Haight: In 1940. What was Hartford's net in 1940?

Mr. Isseks: He means after income tax and depreciation.

Mr. Haight: Research, and everything else.

The Witness: On the closing of our books, a million nine plus.

Mr. Isseks: I thank you.

Q. I would like to show the witness Government's Exhibit 163 for identification. I ask you whether that is your writing?

A. It is.

Q. The handwriting on the bottom is whose?

A. Mr. McNash's.

Q. Right over the "Approved," that handwriting is whose?

A. Mr. McNash's.

Mr. Isseks: I offer the entire document in evidence, including the handwriting thereon.

The Court: It will be admitted over objections.

Mr. Isseks: The handwriting that the witness says is that of Mr. McNash says, "Subject to consultation with Owens-Illinois". I would like to have it marked, the whole document.

(Thereupon Government Exhibit 163 read by Mr. McCracken.)

Q. Does that refresh your recollection that Mr. Levis was [fol. 1897] consulted before you gave this right?

A. Oh, yes, there is no question about that.

Q. No doubt he was consulted?

A. No.

Q. You consulted with him yourself?

A. I don't know whether I wrote or saw him, but the Owens Company were our sole licensee on the coast who had the right to make milk bottles. Hazel-Atlas Glass Company requested us to give them a license to make milk bottles if they wanted to make a small quantity each year, and naturally I took it up with Mr. Levis and he said the Owens Company had no objection.

Q. Now, I would like you to go slowly. You said Owens was the sole licensee on the West Coast that had the right to manufacture milk bottles?

A. They were the only licensee on the West Coast that had the right to make—manufacture milk bottles.

Q. Well, Thatcher manufactured milk bottles.

A. They had no West Coast plant. Thatcher could have if they had a plant on the West Coast.

Q. Oh, I see. I see.

A. Perhaps I didn't make that clear.

Q. I was trying to find out. I thought perhaps Thatcher was limited territorily.

A. Oh, no.

Q. Some other licensees were?

A. Yes. But Thatcher could have built a plant on the West Coast any time and manufactured milk bottles if they so desired.

[fol. 1898] Q. Your Pittsburgh licensee, he was limited to making milk bottles in Allegheny County?

A. Yes.

Q. That was your licensee, J. T. Hamilton Company?

A. That was a sub-licensee from Thatcher.

Q. To use your machinery?

A. Yes.

Q. But in any event you felt that because Owens had a plant on the West Coast and nobody else did, you had to get Owens' consent?

A. Naturally, they were serving the territory well, had an over-production there, and before we granted this license to Hazel-Atlas Company we would naturally take it up with the Owens Company.

Q. Now, Owens was a manufacturer of bottles generally, weren't they?

A. Correct.

Q. So was Hazel?

A. Correct. But Hazel had no milk plant.

Q. Didn't have any milk rights?

A. No.

Q. Before you gave Hazel milk rights, you had to get the consent of Owens?

A. We didn't have to, but we did.

Q. And Mr. McNash put down on this formal document "subject to consultation with Owens-Illinois"—is what it says—"consultation"?

A. Correct.

[fol. 1899] Mr. Isseks: Mr. Philbin, is that right, the word "consultation"? I couldn't decipher it. If you can recognize the handwriting—it looks like it.

Mr. Philbin: Yes.

Q. Did you talk to Mr. McNash and tell him you would have to get Mr. Levis' approval first?

A. I didn't tell him I would have to; I told him I was going to take it up with him.

Q. Did the Owens contract give Owens Pacific, a wholly owned subsidiary of Owens, the exclusive right to manufacture milk bottles on the West Coast?

A. Would you say that again? (Question read by reporter.) No, the 1932 did not.

Q. And you didn't go to Thatcher for their approval, did you?

A. No, because Thatcher had no plant out there.

Mr. Isseks: Just for the record, this was after the alleged cancellation of Section 22 of the 1924 contract. Anybody dispute that it was after the cancellation?

Mr. Wall: If you will delete the "alleged" we will admit that 1933, the date of that, was subsequent to 1932, the date of the other contract.

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[fol. 1900] Q. Under your agreement, first with Hazel-Atlas and then with Owens, each dated July 1, 1932, was Owens entitled to participate in any sums you collected for alleged past infringement from the outsiders?

A. If I remember that; I would like to be checked on it, any suits that had been started before the date of that agreement, they participated. Now, I may be wrong. I would like to be checked.

Q. Did Hazel-Atlas participate in any of these collections?

A. Yes.

Q. They did. Perhaps I can refresh your recollection.

Mr. Isseks: Your Honor, I would like to have marked as Government Exhibit 164, a letter dated April 7, 1933, from the witness to Mr. Levis. The document has been stipulated as genuine by Owens-Illinois.

Q. I ask you, Mr. Smith, whether you wrote that to Mr. Levis?

A. (After witness examines letter.) Yes.

Mr. Isseks: I offer that in evidence.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government Exhibit 164, dated April 7, 1933, read by Mr. Kramer.)

Q. Mr. Smith, did you ever sit down with Mr. McNash or Mr. Levis and figure out just what concerns will be within the one-third class and the others in the one-half class?

A. I don't think so. I think that was covered by letters. I may have.

Mr. Isseks: We have no such document. If there is one, [fol. 1901] I would like to have it.

The Court: If it is in existence it may be produced.

Mr. Isseks: Your Honor, at this time I would like to have marked copy that Mr. Wall gave me of a document dated June 30, 1933, from the witness to Mr. Falck. I assume it is a carbon copy from the files of Hartford, it has on the top, "Copy to A. Houghton", as the next exhibit, 165. Corning has stipulated in Item 802 of the stipulation that it is a photostat of a genuine document, the one I had originally, found in their files. I am substituting the one Mr. Wall gave me, because it is a clearer copy and it contains on it a copy — went to Mr. Houghton.

Q. I ask the witness whether he wrote that document?

(Witness reads same.)

Q. Have you read it?

A. I have.

Q. Did you write it to Mr. Falck?

A. I did.

Q. And send a copy to Mr. Amory Houghton?

A. I think so.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Middleton: Objection.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government 165, a letter of June 30, 1933, to Mr. Alexander D. Falck, read by Mr. McCracken.)

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[fol. 1902] Q. Now, Mr. Smith, you remember this conference, do you not, with Mr. McNash and Mr. Levis?

A. Yes, sir.

Q. You note that in Item No. 8 on page No. 2, you say: "The suit", referring to the Buffalo suit, "if successful would not benefit Hazel, and if unsuccessful it might destroy the very situation Hazel desired". What did you have in mind?

A. Well, just as I attempted to say a few minutes ago: if the Court in Buffalo should render a different decision than what the Court in Philadelphia rendered, then the question on certiorari would go up to the Supreme Court, because you would have two conflicting opinions in two [fol. 1903] different circuits.

Looking ahead, if the Supreme Court should decide adversely to us, that would mean, naturally, a great many people would use a plunger, because our patent would have been declared invalid.

Perhaps I did not understand your question.

Q. You say here if the suit is unsuccessful it might destroy the very situation Hazel desired. If you lost the suit to Reed, they would never pay any royalties, would they?

A. They would not pay on the plunger.

Q. Why should the loss by your company of this suit destroy the very situation that Hazel desired, if a lawsuit would mean they would not pay any royalties?

A. Nobody else would pay any royalties either.

Q. And then they would not collect any money?

A. That is right.

Q. In other words, the thing they were desirous of having was the collection of royalties, and they get a split?

A. I cannot talk for them.

Q. You wrote this.

A. I think what they had in mind was that they wanted to run royalty-free anyway. If they could so run royalty-free, and get the edge, that was a desirable thing.

Q. You got your understanding from conversations with Mr. McNash?

A. I cannot quote him as saying that very thing. You asked me what I thought.

[fol. 1904] Q. But your understanding was based upon talks with him?

A. Yes. But am I quoting Mr. McNash now?

Q. No, you are not.

A. I am just saying what I thought myself.

Q. You say at the very end of the letter: "This whole situation is so important and has so many ramifications that I do hope Messrs. A. D. Falck and Amory Houghton can meet me as suggested". Do you remember meeting them and talking the matter over?

A. I don't remember the meeting; but unquestionably I did meet them and talked the matter over.

Mr. Isseks: Your Honor, at this time I should like to mark the original of a letter dated July 11, 1933. Your Honor does not have it there. Here is a copy right here,—the original of a letter dated July 11, 1933, from Mr. R. D. Brown to Mr. C. B. Belknap, Toledo, which encloses a three-page memorandum dated July 11, 1933, from R. D. Brown to Mr. F. Goodwin Smith. I should like to have all documents marked as one exhibit. I have some extra copies here if anybody wants them. The original has been stipulated as genuine, I am told, by the defendant Owens.

Thereupon, the documents were marked by the Clerk Government's Exhibit No. 166.

Q. Mr. Smith, I show you Government's Exhibit No. 166, and show you the letter: is that Mr. Brown's signature?

A. Yes, sir.

Q. I show you the last page of a memorandum: is that Mr. Brown's signature?

A. It is.

[fol. 1905] Mr. Isseks: I offer them in evidence.

Mr. Middleton: Objection.

The Court: It will be admitted, over objection.

Thereupon, Government's Exhibit No. 166 was read to the Court by Mr. Kramer, of counsel for the government.

(Afternoon recess.)

Mr. Isseks: Your Honor, at this time I should like to offer as Government's Exhibit No. 167, a photostatic copy of an original letter dated August 2, 1933, from the witness to Mr. Houghton. Corning has stipulated that this is a photostat of the genuine document.

Q. Is that your signature, Mr. Smith?

A. It is.

Mr. Isseks: I offer it in evidence.

Mr. Middleton: Objection.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 167 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Now, Mr. Smith, do you remember in the summer of 1933, negotiations were going on with regard to the Ed. Miller Company, at Columbus, Ohio?

A. No,—negotiations by whom?

Q. By Hartford, Owens, and Lynch?

A. No, Mr. Isseks.

Q. Did you not have something to do with those negotiations?

A. When was this; in 1933?

Q. August, 1933.

[fol. 1906] A. Can you refresh my mind as to when the Lynch and Miller people got together?

Q. In August, 1933; to be exact, I think it is August 23, 1933.

A. That refreshes my recollection.

Q. Were you not active in the negotiations resulting in Lynch acquiring the Ed. Miller Company?

A. Only in the final meetings. We did not wish to buy the Ed. Miller Mold Works. I remember that we took the matter up with the Hartford Special Machinery Company to see whether, for any reason, they wanted to add that line of machinery to their business. I think that they sent a representative out there, who went over the plant and equipment, and came back and reported that they were not interested in buying it.

Q. Do you not remember Mr. Levis consulted you about their interest in the matter?

A. I know that Mr. Levis consulted me; asked if we did not want to go in and buy it. We told him no.

Q. Do you not remember that Mr. Levis told you of conversations he had with Mr. McNash about the attitude Mr. Levis would take with regard to Miller and Lynch if McNash would not come through and help them out on this problem you were having about having a determination in another circuit, before July of 1934?

A. I do not happen to remember it. I do not deny it.

Q. See if I can refresh your recollection,——

Mr. Isseks: Your Honor, at this time I should like to offer a document dated August 10, 1933, written by the [fol. 1907] witness to Mr. Amory Houghton; and stipulated as coming from the files, I believe, of Corning.

The Clerk: Government's Exhibit No. 168.

Q. Is that your signature on Government's Exhibit 168, Mr. Smith?

A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Middleton: Objection.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 168 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, does the next to the last paragraph of the letter you wrote, particularly the last sentence in that paragraph, reading: "Levis has told McNash that he will not go through with the Miller deal and that he will not go through with the Lynch deal unless he (McNash) gives us the relief we are asking." Does that refresh your recollection as to what happened?

A. No, but I do not deny it.

Q. And of course you got that information from Mr. Levis, did you not?

A. Undoubtedly so.

Q. Did I understand you to say before that your company had no financial connection with the Miller deal?

A. No. I did not say that. I said that we were not interested in buying out the Miller machine.

Q. Did you have any financial connection?

A. Yes, sir.

[fol. 1908] Q. What was that connection?

A. When the deal was finally consummated, we paid to the Lynch Company, I think it was $125,000 for all future feeder rights.

Q. Did Mr. Levis' company have any participation in it?

A. In the Lynch Company?

Q. In connection with that deal?

A. Oh, yes, Mr. Levis had some kind of connection with the deal.

Q. Financially?

A. You mean his company or Mr. Levis?

Q. His company or Levis personally?
A. That, I cannot answer definitely.
Q. See if I can help your recollection.

Mr. Isseks: Your Honor, I have here a blueprint, and if I could have a copy instead of the blueprint it might be easier to read in the record. I offer in evidence and shall have marked the blueprint, which is apparently the equivalent of a photostat, of an original, dated August 24, 1933, from the witness to Mr. Houghton; and stipulated as a blueprint of an original coming from the files of Corning.

The Clerk: Government's Exhibit No. 169.

Q. I ask you, Mr. Smith, whether that signature is yours?
A. Yes, sir.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, over objection.

[fol. 1909] Mr. Isseks: I intend to go back in a minute, Your Honor, and offer Mr. Philbin's opinion. I will offer it right now.

Mr. Philbin: My suggestion is that the letter from Mr. Smith to Mr. Houghton was marked No. 168. That letter referred to a copy which is enclosed. I suggest that the copy be marked 168-A.

The Court: You may mark it 168-A.

Mr. Isseks: I have marked the photostat of the opinion No. 168-A. I will describe it after it is marked.

No. 168-A, Your Honor, which will be read in a few minutes, has on the top, "Copy made for F. G. Smith, August 9, 1933; Fish, Richardson & Neave, New York, July 28, 1933;" addressed to Mr. McNash; signed by Stephen H. Philbin. It is stipulated by Owens as coming from their files.

I believe Your Honor admitted No. 169?

The Court: That is right.

Mr. Isseks: And Your Honor admits 168-A too?

The Court: 168-A may be admitted, over objection.

Thereupon, Government's Exhibit No. 168-A was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, I should like to have Government's Exhibit No. 169 read, the letter from the witness to Mr. Houghton, dated August 24, 1933.

[fol. 1910] Thereupon, Government's Exhibit No. 169 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, what reasons for the first time did Mr. Levis give you for the extra $50,000?

A. It is not very clear in my mind, but I think it was something like this,—and I am not sure, Mr. Isseks: The Lynch people had bought out——

Q. Ed. Miller?

A. Ed. Miller and Company, and that had taken a good deal of money.

Q. Over $400,000?

A. Yes; and, as I remember it, that left the Lynch Corporation a little short of working capital. Just what the extra 25 is that is mentioned there, I cannot tell you. I have forgotten.

Q. See if I can help you out. Do you not remember on the papers, Lynch was buying out Ed. Miller?

A. Oh, yes. They did buy out Ed. Miller and Company.

Q. Who financed that to the best of your recollection?

A. I don't know whether the Illinois Company or Mr. Levis personally, or who it was.

Q. And they needed some $50,000 more for financing?

A. Working capital or financing, I don't know which.

Q. He asked you for $25,000?

A. Yes, sir.

Q. You just gave it to him?

A. Yes, sir.

Q. Why?

[fol. 1911] A. Because he told us Lynch needed that extra as working capital, or perhaps to close the deal; I cannot tell you.

Q. At that time you were manufacturing a former, were you not?

A. We were.

Q. And Lynch were manufacturing formers?

A. Yes, sir.

Q. You just gave Mr. Levis $25,000 because he wanted it for the Lynch Company?

A. Yes. I thought having all types of forming machines manufactured by one company—the Lynch Company was a good manufacturer—they built their machines—their machines were used by our licensees,—without royalty—I thought it was a good thing to have one place where our licensees could get either a narrow neck bottle machine or a press and blow machine, or a press.

Q. Lynch was a competitor of yours, was it not?

A. Oh, yes, it was.

Q. Did you give them this $25,000 in a check?

A. Yes, sir.

Q. Are you sure it was a check?

A. I have no reason to doubt that it was.

Q. Did he ever give it back to you?

A. No, sir.

Q. You never got it back?

A. No, sir.

[fol. 1912] Q. Does he owe it to you,—Mr. Levis?

A. No, sir.

Q. It was a gift?

A. Yes, sir.

Q. This is new to me. $25,000 is quite a little piece of change in American money.

A. Mr. Isseks, do not misunderstand it. Ed. Miller wanted to sell, as I remember it. We thought it was good business for our licensees to have a place, one place, where they could purchase well built machines, well constructed machines, and could order from Lynch any type they wanted.

Q. Ed. Miller was manufacturing forming machinery at that time, was he not, before the deal went through?

A. To some extent,——

Q. He was a competitor of yours, was he not?

Mr. Wall: Let him finish.

Mr. Isseks: I beg your pardon.

Q. Finish your answer.

A. I think he was manufacturing a few machines.

Q. His company was in competition with yours, was it not?

A. Oh, yes. Let me qualify that. As I remember, the Miller machine and mold works did not make any narrow neck machines; they made press and blow type machines.

Q. Did you make narrow neck machines.

A. We did.

Q. Did you make wide mouth machines?

A. Ed. Miller did.

[fol. 1913] Q. Did you?

A. Not at that time.

Q. Do you now?

A. No, sir.

Q. You had before that?

A. Yes, sir.

Q. Lynch made what?

A. Narrow neck bottle machines.

Q. They were selling to the same people, weren't they—Ed. Miller—as you were?

A. Oh, they were selling.

Q. They were selling them and not licensing them?

A. Right.

Q. You had no corporate relationship with Owens-Illinois?

A. No.

Q. Mr. Levis told you that he or his company was financing the purchase of Ed. Miller by Lynch?

A. I do not know whether it was Mr. Levis or his company, or the Illinois Company, or just how it was. Just what the details were of that deal, I am not familiar with.

Q. And he asked you for an extra $25,000?

A. Yes.

Q. And you gave it to him?

A. Yes.

Q. Did you ever get a receipt?

A. No.

Q. Did you ever take it up with your Board of Directors?

[fol. 1914] A. I don't think so. I think I reported it to my Board of Directors.

Q. Did you ever take it up with your stockholders?

A. No.

Q. How did you treat it on your books?

A. As a license right. As I remember it—it all can be checked—we paid $125,000 to Lynch. Now Lynch had been infringing our rights and we gave Lynch a license under our rights, and in return he gave us a license under such feeder rights that he might subsequently have.

Q. Was this $25,000 part of the $125,000?

A. As I remember it. Yes, sir.

Q. How did you pay the other hundred thousand dollars?

A. I could not say, Mr. Isseks, but it can all be checked. The whole transaction called for one payment of $125,000.

Q. I see. Then you say in the letter, Levis says after thinking it over further if we want him to send us $25,000 he would be glad to do so. Did you ever ask him for the $25,000.

A. No.

Q. Then you also say in this letter the next time you and I meet I want to unfold to you his ideas and plans for having his fingers in every pie. Did you meet Mr. Houghton later?

A. Yes.

Q. Did you tell him his plans?

[fol. 1915] A. Yes.

Q. What were they?

A. He had a number of plans and they were shifting quite rapidly.

Q. I am interested in the things he told you and you were going to tell Mr. Houghton. They related to the glass industry?

A. I assume so.

Q. Oh, no, I want your best recollection?

A. I have no best recollection as to what plans were specifically referred to.

Q. They did relate to the glass industry?

A. I assume so.

Q. Your best recollection?

A. Yes.

Q. Don't you remember anything that was said about his plans and ideas that he had to have his finger in every pie?

A. No.

Q. I will take your general recollection?

A. I have no recollection of what particular plans I referred to in that letter.

Q. You said, "indefinitely." I will take your indefinite recollection?

A. I have no recollection of what the particular plans were that I referred to in that letter.

Q. Hazel did agree, did it not, to extend the time during which it could cancel to a two-year period?

A. That is correct.

[fol. 1916] Q. Then you said, I think therefore we ought to start working on Reed as early as possible. Which Reed do you mean?

A. Reed Glass Company.

Q. Where is that located?

A. Rochester.

Q. A suit had been brought by your company, had it not, some time in 1930?

A. Correct.

Q. That suit is still pending?

A. Yes

Q. You say here, "Confidential plans have already been agreed upon whereby Levis will be elected a director of Hazel-Atlas on October 1st". Who told you that?

A. Levis.

Q. Was he elected a director?

A. So far as I know he was.

Q. Then you say "He has made a number of other moves which so far as I can see to prevent McNash from opposing a number of his (Levis') plans. This is another phase of a general situation which some time I would like to talk over with you." Do you remember what Mr. Levis told you?

A. No.

Q. You are not embarrassed about me asking you these questions?

A. Not a bit.

Q. If you remembered, you would tell me?

A. Yes.

[fol. 1917] Q. But you don't remember?

A. Just don't remember.

Q. But whatever they were, they related to the glass industry?

A. Oh, yes.

Mr. Isseks: Your Honor, at this time for the record I would like to have marked what I am told is a copy of the supplementary agreement between Hartford-Empire and Hazel-Atlas dated August 29th, 1933, signed by NcNash on behalf of Hazel-Atlas, and by the witness on behalf of Hartford-Empire. It extends the understanding they had from one date to two years thereafter.

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[fol. 1918] Mr. Isseks: All right, it is marked Exhibit 170. I offer it in evidence.

The Court: It may be admitted over objection.

Q. Mr. Smith, there has been talk about Ball Brothers in the past. Who are Ball Brothers?

A. Ball Brothers are very large manufacturers of fruit jars and other glassware.

Q. Where were they located?

A. Muncie, Indiana.

Q. Who were the heads of that company?

A. Mr. Frank Ball and Mr. George Ball.

Q. Do you remember your first discussions at any time with the Ball Brothers about fruit jars?

A. I could not tell you the particular year of the first discussion.

Q. Pretty far back though, isn't it?

A. Yes, it probably is.

Q. Long before the contract of July 1st, 1932?

A. I would say so.

Q. You never sued the Ball Brothers, did you?

A. Not to my recollection.

Q. Did you ever threaten to sue them?

A. I think so.

Q. Did you ever serve them with a notice of suit?

[fol. 1919] A. That I could not tell you.

Q. But in any event you never sued them?

A. That is correct.

Q. Were they using automatic machinery for the production of glassware?

A. Yes, sir.

Q. What is the principal item of glassware that they made?

A. Fruit jars for the domestic household trade.

Q. That was practically their entire business for many years?

A. The major part of their business.

Q. Now, do you recall conversations you had with Ball Brothers as early as 1926?

A. No, sir. But I would not doubt that we did have conversations as early as that.

Mr. Isseks: Your Honor, at this time I would like to have marked letter dated March 22, 1926, from Herbert Knox Smith to Mr. George Ball. It is stipulated it is a genuine document coming from the files of the Hartford-Empire Company. It is marked Exhibit 171.

I would like also to have marked at the same time a longhand written memorandum which has on the top 3-30-26 Ball Brothers. Then it is signed H. K. S., twelve pages. Before the item it has the initials signed F. G. S. and H. K. S.

Q. Mr. Smith: I hand you Exhibits 171 and 172, and ask you whether you remember the matters referred to therein?
A. I have no reason to doubt that letter.
Q. What about the memorandum which states on the top [fol. 1920] of it that you attended a conference on the date referred to, that is Exhibit 172?
A. I have no reason to deny that.

Mr. Isseks: Your Honor, I offer both documents in evidence in view of the witness's statement.

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The Court: I think I will admit it over the general objection.

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[fol. 1921] Q. I will hand you Government's Exhibit 171, and ask you first whether it refreshes your recollection of a conference you had with Mr. Knox Smith, and whether that sets forth in substance what took place. In that connection I will show you the diary entry of Mr. Knox Smith from March 19, 1926, March 20, 1926, March 22, 1926, March 23, 1926, March 30, 1926, solely to refresh your recollection. I have had excerpts made. Rather than to show it to you I will hand you a copy. I do not intend to offer the diary. I am trying to refresh the witness's recollection only.
A. Mr. Isseks, I remember some time meeting Mr. George Ball and his son, or rather, Mr. Frank Ball and his son.
Q. Now look at the letter which you have in front of you, Government's Exhibit 171, please, the diary, particularly [fol. 1922] on March 19 and March 20, and I will ask you whether that refreshes your recollection that Mr. Knox Smith went over with you the contents of that letter that he sent to Mr. George Ball on March 22nd?
A. Well, that I would not know, but I would think this would be an ordinary letter that Mr. Knox Smith would write because Mr. Ball might have asked him to write him something about our general terms and conditions.

Q. Does the diary entry refresh your recollection that before the letter went out Mr. Smith discussed it with you?
A. No, but I would not deny it.

Mr. Isseks: Your Honor, I pressed my offer——
The Court: It has been admitted over objection.

Q. I will show the witness Government's Exhibit 172, and ask him whether that memorandum does not set forth what transpired at the conference you said you remembered having with Mr. Frank Ball, his son, and Mr. Knox Smith. You said you remembered attending a conference way back with Frank Ball and his son?
A. Along about 1926 we did meet the Balls, some of them. Now just what dates, or again what was said at any particular conference, I do not remember, Mr. Isseks, but I would have no reason to deny this.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It will be admitted, over objection.
[fol. 1923] Mr. Isseks: Thank you. I would like to have Exhibits 171 and 172 read.

(Reading Exhibit 171.)
(Reading Exhibit 172.)

Mr. Isseks: Your Honor, at this time I would like to have marked photostatic copy of an original letter dated January 29th, 1927, from William E. Levis on the stationery of the Owens-Illinois Glass Company to the witness. It is stipulated as a genuine document coming from the files of Hartford.

Q. Mr. Smith, I show you Government's Exhibit 173, just marked, and ask you whether you identify Mr. Levis's signature?
A. I do.

Mr. Isseks: I offer it in evidence.
The Court: It may be received, over objection.
Mr. Isseks: I would like to have it read.

(Reading Exhibit 173.)

Mr. Shaffer: If your Honor, please I just want to mention the previous limitation as to the admissibility of this letter.
The Court: It may be done.

Mr. Middleton: To clear the record, William E. Levis, who signed this as vice-president and general manager was then of the Illinois Glass Company.

Mr. Isseks: That is right. Mr. Wall told me he would try to furnish us a copy of the letter the witness sent to Mr. Levis.

[fols. 1924-1925] The Court: We will suspend here until ten o'clock tomorrow morning.

(Night adjournment.)

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[fol. 1926] Mr. Isseks: Mr. Wall has given me an extra page to Exhibit 165, which is dated June 30, 1933, and which had attached to the copy in the files we had, from the files of Corning, a memorandum having four items, and this copy has the memorandum thereon.

Mr. Wall: And this is to furnish copy of the same memorandum which is in the Hartford files. The memorandum itself was apparently attached to the exhibit coming from the Corning file.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 174, a letter dated May 14, 1929, from the witness to Mr. Carter.

Q. Did you write that letter, Mr. Smith? It is stipulated as coming from the files of Hartford.

Mr. Wall: As a matter of fact it is stipulated as genuine, I believe.

Mr. Isseks: I am sorry, and I thank you.

A. (After witness reads letter.) Yes, I think I wrote that.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted over objection.

(Government Exhibit 174 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have offered as Government Exhibit 175, photostatic copy of original letter stipulated as genuine by Hartford. That letter is dated May 18, 1929, from Mr. Carter to the witness.

Q. Mr. Smith, do you recognize the signature of Mr. Carter?

A. I do.

[fol. 1927] Mr. Isseks: I offer the document in evidence.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government Exhibit 175 read by Mr. Lewis.)

Q. Now, Mr. Smith, you testified yesterday that your company never sued Ball Brothers?

A. Not that I remember.

Q. As far as you know did Owens ever sue Ball Brothers?

A. I don't remember that they did, Mr. Isseks.

Q. You made the request in '29, and we have had Mr. Carter's reply to you, but after that did they ever bring suit as far as you know?

A. As far as I remember.

Q. They did not?

A. They did not.

Q. After you had made the contracts of July 1, 1932, with Hazel-Atlas and Owens, did you take any steps to get in touch with the Ball Brothers Company?

A. Yes.

Q. Tell us what you did, please.

A. Well, we were still very anxious to have them as a licensee, collect royalties on what we considered infringing feeders, they were a large concern, and we started to negotiate with them again.

Q. Did any of your other gentlemen,—I think you called them "partners" yesterday in one of your documents,—your partners Owens, or Hazel-Atlas, assist you in any way?

A. Well, I don't know what you mean by "assist".

[fol. 1928] Q. Well, did they participate in the negotiations?

A. Yes.

Q. Which company—both?

A. Yes.

Q. Tell us what happened, and who from the companies—Mr. Levis?

A. Are you talking now about the final negotiations with Ball?

Q. No, I want the negotiations after July 1, 1932, or, rather, after July 21, 1932, when you made your announcement to the trade.

A. Well, I think I had quite a few meetings with the Ball Brothers in regard to taking a license.

Q. Where?

A. In New York.

Q. Anywhere else?

A. Not that I remember.

Q. Did Mr. Levis attend those meetings?

A. When we found some basis on which we thought we could get together, in some of the meetings Mr. Levis was there, and in some of the meetings Mr. McNash.

Q. Don't you remember that not very long after the contracts were signed you and Mr. McNash arranged to see the Messrs. Ball at Atlantic City?

A. I don't happen to remember that.

Q. Don't you remember talking to the Ball Brothers in Atlantic City with Mr. McNash?

A. I talked to them quite a few times, and there was one [fol. 1929] convention that I attended, too; just the date I cannot remember,—when I talked to Frank Ball, I think, and Mr. George Ball.

Q. Mr. McNash there?

A. I wouldn't remember. I have no reason to doubt his being there.

Q. What did you talk about?

A. I suppose about their taking a license, Mr. Isseks, about all we had to talk about.

Q. What did they say?

A. I cannot tell you just what they said.

Q. Did they say, "Sure, we will take a license"?

A. No, they never do business that way.

Q. Well, did they ask you for anything?

A. What date are you talking about?

Q. I am trying to get the first time you saw them. You said you may have seen them, or have a dim recollection you saw them, at a convention. Was that convention at Atlantic City?

A. Yes, I was there at Atlantic City.

Q. Was Mr. McNash there?

A. Yes, I think I remember he was.

Q. Was he there at the conference with Messrs. Ball?

A. He may have been, I can't tell you.

Q. Was Mr. Levis there?

A. Yes, Mr. Levis was there.

Q. Did you all attend the conference, I mean the conference relating to Ball Brothers taking a license?

[fol. 1930] A. It might have been so, Mr. Isseks.

Q. What is your best recollection? That doesn't help me.

A. I just don't remember what was discussed in detail at that conference except that shortly after 1932 on we did our best to get Ball Brothers to take a license, and there were a great many meetings.

Q. What did the Ball Brothers say, did they say, "Sure we will take a license"?

A. Oh, no.

Q. What did they want?

A. Why, they wanted to know what kind of a license they could get, and they also wanted to have included in a license from us to purchase our residual rights in household domestic fruit jars.

Q. Didn't they tell you they wanted to be placed in the position where they would have as exclusive a right to manufacture household domestic fruit jars as they possibly could?

A. Why, I think they told us if they were going to buy our residual rights, that would place them in such position.

Q. They weren't satisfied with that, they wanted more than that, they wanted somebody else's rights, didn't they?

A. I don't know whether they did just at that time. Of course, they eventually did, as the negotiations went on.

Q. Didn't they tell you they were not interested in a license unless they could get, in effect, a monopoly on the manufacture of household fruit jars on your equipment?

A. No, I wouldn't say that. They did want and insisted [fol. 1931] upon our selling to them our residual rights in the household domestic trade.

Q. Let's go slow. First of all, was anybody licensed by you at that time to make fruit jars?

A. Oh, yes.

Q. Who?

A. The Owens Company and the Hazel Company.

Q. Anybody else?

A. No, no license—yes, excuse me, there was one. General Glass had a license.

Q. And General Glass had an unlimited right, did they not, to manufacture fruit jars?

A. That is right.

Q. Who owned General Glass at that time?

A. The Hocking Glass Company.

Q. Who was the head of General Glass?

A. Mr. Collins.

Q. Who was a director of your company?

A. That is right.

Q. Didn't the Ball Brothers say they wanted that right that General Glass had?

A. Why, yes, we couldn't, naturally, sell them residual rights unless we got that right back from General Glass.

Q. I don't understand that. If somebody had a right and you had something left, you could sell what you had left?

A. Yes, but they insisted we pull back, or buy back, that right from the General Glass Company.

Q. That is different from what you said before.

[fol. 1932] A. You are right. I was wrong.

Q. Didn't they also raise the question there were a lot of other people around making fruit jars and they didn't like it?

A. I don't happen to remember that.

Q. See if I can refresh your recollection. Didn't they say to you, "This fellow Underwood, who has just become a licensee of yours, is making fruit jars and we don't like it"?

A. They may have.

Q. Didn't they tell you you would have to put a stop to it, otherwise they won't sign up with you?

A. We couldn't—I don't remember that they said they wouldn't sign up if we didn't put a stop to it.

Q. Didn't they tell you you would have to do something about Underwood before they would sign up?

A. No, I don't think that is right.

Q. Don't you remember that?

A. No, I don't.

Q. Well I will try to refresh your recollection in a few minutes. Don't you remember they said to you also they didn't like the Brockway situation, Brockway was making fruit jars and they did not want Brockway to make fruit jars?

A. I don't happen to remember that.

Q. Don't you remember that?

A. No.

Q. Don't you remember they told you there was a little [fol. 1933] plant called Monaco that was making fruit jars, and they didn't like that?

A. I don't remember they said that; they may have.

Q. Don't you remember also they wanted to know how many fruit jars Hazel and Atlas was going to make?

A. No, I don't. I couldn't tell them that.

Q. Your right to Hazel and Owens were unlimited, weren't they?

A. Oh, yes.

Q. Didn't Ball Brothers say to you before they would go ahead Hazel would have to limit its total annual production of fruit jars?

A. Mr. Isseks, as the negotiations developed, they did wish to have an understanding of restrictions, no question about that.

Q. Didn't they also say that Owens would have to restrict its production of fruit jars?

A. They asked that Owens restrict its production. They asked that Hazel restrict its production.

Q. What did Mr. McNash say?

A. I think Mr. McNash was agreeable they do it.

Q. What did Mr. Levis say?

A. I think he was agreeable to so doing.

Q. Do you remember anything else about the negotiations?

A. Yes, there were quite a few conferences, off and on, I just can't catalog the particular things that happened at the particular conferences.

Q. Didn't the Ball Brothers say before they would sign up you would have to take care of the General Glass Com- [fol. 1934] pany and get their rights?

A. Yes.

Q. Did they also say before they would sign up that Hazel would have to agree to limit its production?

A. And Owens as well.

Q. Then they said they would sign up?

A. I think so, yes.

Q. There was some money, enough, to use your expression, to give a "floor fund"?

A. Yes, we thought our residual rights were worth a lot of money.

Q. How much money?

A. Eventually we obtained $400,000.00.

Q. How much of that did you give to General?

A. $100,000.00.

Q. Of course you had to give something to Underwood. You don't remember that. Excuse me. I am sorry. You have no recollection about the Underwood thing, and I don't want to put words in your mouth.

A. Not all the details or just when it occurred.

Q. But you did, at any rate, give Underwood something for giving up their fruit jar rights which they didn't have?

A. If you will wait a minute——

Q. I will ask you another question.

Mr. Haight: Are you going to let him answer?

Mr. Isseks: I am sorry. I certainly will.

Mr. Haight: He said he wanted to think about it [fol. 1935] a minute.

A. (Continuing:) If I recollect correctly, the Ball Brothers dealt with Mr. Underwood, and on the question of the cap business, or something of that sort, and made a certain offer and the offer didn't please Mr. Underwood at that time. At that time Mr. Underwood's company wasn't any too strong financially, and I think Mr. Underwood came to us and said, "Now, I am not getting enough money out of the Balls for this, and you have got damage charges against me on your books for past claims, won't you reduce those charges on your books or give me a credit if I sell out my cap business"—or whatever it was that he was dealing with Ball for. And we said "Yes".

Q. You are not trying to give the impression Mr. Underwood came to you and asked you for a favor, are you?

A. He asked for a favor, no question about that.

Q. Don't you remember you sent for Underwood and asked him to come to Hartford and asked him to make this arrangement?

A. No, I don't remember that, but we were very anxious to have him make an arrangement with Balls.

Q. Let's go a little slower. First of all the contract which is August 29, 1932, between the Knox Company and your company flatly excluded the Knox Company from manufacturing fruit jars. If I am wrong the gentlemen can correct me.

A. I think you are right, Mr. Isseks.

Q. In other words, when you finally got the Knox people to come in, you wouldn't let them manufacture fruit jars?

[fol. 1936] A. That is true.

Q. So that they had no fruit jar rights, the Knox Company, under your feeder, is that right?

A. I think that is true.

Q. Don't you remember the gentlemen known as the Ball Brothers, Frank Ball and George Ball, insisted that you have a clear understanding with Underwood that he not manufacture fruit jars on other equipment as well as on your feeders?

A. No, because I don't see what control we would have over Mr. Underwood manufacturing jars on other equipment.

Q. All right. And don't you remember that you said to Underwood, "You owe us $44,000.00 as part of the $100,000.00 you agreed to pay us under the August 25, 1932, contract, and if you will sign this, make this deal with the Ball Brothers, we will just forget that $44,000.00"?

A. No, I don't. I think as a matter of fact they owed us around $90,000.00.

Q. You would only split half of it?

A. Yes.

Q. In other words, you did give them part of it?

A. Credited them.

Q. And it was about $45,000.00?

A. Somewhere around that.

Q. Don't you remember the Ball Brothers also said, as part of the residual rights you would give them, pull in this General Glass, get Hazel to make the arrangement, and get Owens,—at the last it was decided you would also have to agree not to give anybody else rights to manufacture [fol.1937] fruit jars?

A. That was part of the contract, naturally.

Mr. Isseks: Now, Your Honor, at this time I would like to have marked as Government's Exhibit 176, a copy of letter dated September 30, 1932, from Mr. McNash to the witness, and this document, Your Honor, has been stipulated as genuine by Hazel-Atlas Corporation.

Q. Mr. Smith, I hand you Government Exhibit 176 and ask you whether you remember receiving that in the regular course of business?

Perhaps we could substitute for the original. For the record we will substitute a photostat for the original. It will be Government Exhibit 176.

Q. I will save you the trouble of reading it. I didn't realize I had it. I show you the substitute exhibit, which is photostatic copy of the original coming from the files, and ask you whether you recognize the signature of Mr. McNash?

A. I do.

Mr. Isseks: I offer it in evidence. I offer the photostat of the original in evidence.

The Court: It may be received over objection.

Mr. Isseks: I would like to have it read.

(Government Exhibit 176 read by Mr. Kramer.)

Q. Now, at that time, Mr. Smith—this is September, 1932—of course, Hazel-Atlas was manufacturing glassware, wasn't it?

A. Oh, yes.

Q. Under their contract with you. I want to clear something up. I think we all know it, but a lot of things we [fol. 1938] know, the Court doesn't know. Did they give you title to their equipment?

A. No, they had built and owned their own feeders. They merely paid royalty on the operation of those feeders.

Q. In the case of the other settlement with Knox, and with Universal and Lamb and Maywood and Latchford and Brockway, did you let them retain title to the feeders you said were infringing?

A. On the Miller feeders, no.

Q. Whatever the feeders were.

A. No.

Q. They weren't all Miller feeders, were they?

A. No, Brockway had their own.

Q. Brockway said they built their own feeders, didn't they?

A. Yes, quite right.

Q. Did you require them to give you a bill of sale and you get title to the feeders?

A. Yes, we did that in a number of cases, in lieu of heavy damages.

Q. In the case of Hazel-Atlas it was your position, was it not, the feeders they built infringed your feeders?

A. That is correct.

Q. They took the position they did not?

A. That is right.

Q. And two judges decided your way?

A. Correct

Q. And two judges decided their way?

[fol. 1939] A. That is right.

Q. But the two judges who decided your way prevailed?

A. Yes.

Q. And they were denied petition for certiorari, and we have been all over that?

A. We have been over it.

Q. Did you ask them to give you title to their feeders?

A. Ask Ball Brothers?

Q. No, Hazel-Atlas.

A. I think we asked them but they declined.

Q. They said they built the feeders and they were theirs?

A. Yes, they refused to give title.

Q. They refused to give you title?

A. Yes, always.

Q. And they take that position today?

A. I couldn't say.

Q. At any rate they refused to give you title to the feeders?

A. That is correct.

Q. And they still have them?

A. They have.

Q. And wasn't Hazel-Atlas, as far as you knew, manufacturing fruit jars on all kinds of equipment?

A. I wouldn't assume so.

Q. It wasn't just on the things you said infringed your patent?

A. They were manufacturing fruit jars by their feeders, and their feeders infringed our patent.

Q. That is what you said?

[fol. 1940] A. Yes.

Q. They said they didn't?

A. Yes.

Q. And they had title to the equipment?

A. Yes.

Q. Do you know whether they manufactured fruit jars on so-called suction machines?

A. I don't think they did, because I always understood—now, this is just memory—that the Ball Brothers had the exclusive license of the suction machine for fruit jars.

Q. That is very interesting. Let's explore that. As far as you knew Ball Brothers had the exclusive right from whom to manufacture fruit jars?

A. Owens.

Q. So that when they came to see you, at the time you saw them at Atlantic City, they had, as far as you knew, the exclusive right to manufacture fruit jars on suction machines?

A. Or a right to do so. I don't know how long their exclusive rights ran. They may have expired by that time.

Q. At any rate, it was exclusive originally?

A. I think it was.

Q. You don't know whether Hazel was making fruit jars on equipment other than the equipment you claimed infringed?

A. I don't think they were.

Q. And Hazel's royalties under the contract were payable into the pot, into the fund?

A. Payable to the Hartford-Empire Company.

Q. Payable to Hartford-Empire Company; all right, sir. [fol. 1941] It was payable only on equipment that you claimed infringed?

A. That is correct. No, that is not correct. If they had any machines that didn't come under our patents, of course they could use those machines as they saw fit without paying us.

Mr. Isseks: At this time, Your Honor, I would like to have marked as Government's Exhibit 177, photostatic copy of memorandum which has, in the upper-left-hand corner, "Copied 10-10-32: A.T.S." Then it has "Copy of notes made by Mr. F. Goodwin Smith at his meeting with George Ball, Frank Ball, Frank Ball's son"—on the right-hand corner somebody has written, "Frank E. Ball"—"and Brady, on October 6, at the Waldorf-Astoria, New York"; on the left-hand side somebody has put down "A.T.S. copy."

Q. Mr. Smith, will you look at that memorandum and see if it refreshes your recollection you dictated that memorandum?

A. (After reading same.) I did.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted over objection.

The Witness: What was the date?

Mr. Isseks: It says "October 6, 1932."

Q. Mr. A.T.S. was Mr. Safford, was he not?

A. That is true.

Q. Secretary of your company now?

A. Correct.

[fol. 1942] Q. Mr. Smith, I show you Government's Exhibit 177. I want to ask you a very few questions. First of all, do you remember the conference?

A. Yes. I happen to remember this conference because I was under the inpression I was to meet one of the Balls, and I met four of them in the family.

Q. Who was Mr. Brady?

A. I think he is a brother-in-law.

Q. There is a reference to "P. & P."

A. Proprietary and prescription ware.

Q. These bottles are used for medicinal purposes?

A. Yes, sir.

Q. In other words, they wanted the right to manufacture, in addition——

A. To domestic fruit jars.

Q. —under your patents the various matters you listed there?

A. Quite right.

Q. In Item 6 you say a general license from Hartford would carry some kind of agreement that Ball Brothers would not license others under their feeder patents. Did Ball Brothers have some feeder patents?

A. I think they did.

Q. That was one of the conditions you were making?

A. That is right.

Q. You had the problem after this conference of getting in touch with the various people mentioned here. For instance, you say you must find out about the attitude of Mr. Levis and Mr. McNash?

[fol. 1943] A. Yes, sir.

Q. And then you had the problem of Mr. Collins?

A. That is correct.

Mr. Isseks: I should like, at this time, to have marked a copy of a letter dated October 10, 1932, from the witness to Mr. Collins, copy to Mr. McNash. This copy we have is certified as a true copy by the Hazel-Atlas Glass Company, a true copy of the original.

Mr. Fuller: If the Court please, we have not joined in the stipulation as to the genuineness of this document, for the reason, Mr. Isseks, in September, asked us to advise Mr. Collins and the Anchor Hocking Glass Company to search their files for the original. We did not find the original. Therefore, in addition to the general objection on the ground of irrelevancy, immateriality, and incompetency, on behalf of each of the Anchor defendants, I add the specific objection that no foundation is laid, and that the document is a copy.

Mr. Isseks: Well, Your Honor, first of all, I call upon the defendant, I. J. Collins, to produce the original.

Mr. Fuller: We have not it in our files.

Mr. Isseks: I think we are entitled to find out. The letter was sent through the mails. At least they can make a further search. Then I ask the witness a question to lay the foundation.

Secondly, I call upon Mr. Wall to produce the photo- [fol. 1944] static copy from the files of Hartford.

Mr. Wall: We have furnished everyone else in the courtroom with that; so help yourself.

Mr. Isseks: Now, Your Honor, this is very helpful to me. I now want to substitute for Government's Exhibit 178 a photostatic copy of the carbon copy coming from the files of Hartford, and given and handed to me by counsel for Hartford, which has on the top of it: "Copy to Mr. Levis and Mr. McNash;" and addressed to Mr. Collins. It has some other language on it I will refer to later on.

Mr. Wall: File clerk's hieroglyphics.

Mr. Isseks: We will ignore them.

Mr. Wall: Yes.

Mr. Isseks: I should like to have it substituted as Government's Exhibit No. 178.

Mr. Fuller: We make no objection to the substitution: Just the same objection to the use of the letter.

Mr. Isseks: It is quite obvious, Your Honor, as my associate, Mr. Curtis points out, they admit they have not the original. Secondary evidence, therefore, is the best evidence. This is a carbon copy from the files of Hartford. Counsel for Anchor-Hocking have signed a stipulation that we may use photostatic copies in lieu of the originals. This is a photostatic copy from the files of Hartford.

Mr. Fuller: So that the record may be clear, we do not admit receiving the letter.

Mr. Isseks: Does Your Honor want any authorities on [fol. 1945] this?

The Court: No; you may proceed.

Q. Did you write the letter to Mr. Collins?

A. I have no reason to doubt that I did.

Q. You wrote the letter?

A. I think I did.

Q. You turned it over to your secretary to mail, did you not?

A. I probably did.

Q. In the regular course of business?

A. Yes, sir.

Mr. Isseks: Your Honor, the photostat of the carbon copy has notations thereon that Mr. Wall said were file clerk's notations, indicating that it was in the files.

Q. There is a notation on the carbon copy in your files that a copy went to Mr. Levis and to Mr. McNash. Did you give those directions to your secretary?

A. I cannot remember.

Q. In the regular course of business?

A. If I so instructed my secretary, naturally she sent it.

Q. She would so note on the carbon copy in the files, would she not?

A. I think she would.

Mr. Isseks: Your Honor, there is a stipulation on file between the government and Hazel-Atlas that a copy was found in the files of the Hazel-Atlas Corporation. I offer it in evidence.

The Court: It may be admitted, over objection.

* * * * * * *

[fol. 1946] Q. Now, Mr. Smith, you remember that letter very well, do you not?

A. I remember writing it.

Q. Did you ever have a talk with Mr. Collins about this subject matter?

A. Undoubtedly.

Q. Oh, no: I want your best recollection. This is not so very long ago; and it was a very important matter, was it not?

A. Oh, yes.

Q. It was so important that you said it would be suicidal to put up any barriers? You must remember that?

A. I thought it was a very important matter. We had been trying for years to get Ball Brothers to take a license, [fol. 1947] and negotiations had gone on and on and on. I also felt that they were the one company which could make the best advantage of our rights to make domestic fruit jars; because it took an enormous capital to go into that business. They start shipping early in the year on consignment. They are not paid for the jars until the grocery man sells them in the summer and fall. It always seemed to me that they were the logical people to have that right.

Q. As far as you were concerned?

A. As far as we were concerned, yes.

Q. I want to go back in my question. Did you talk to Mr. I. J. Collins after this letter was written?

A. Of course I did.

Q. Where?

A. That I cannot tell you.

Q. Was anybody else present?

A. I don't remember.

Q. What happened? What was said by you and what was said by him?

A. I am wholly unable to tell you.

Q. I am entitled to an answer. This is, as you said, a very important matter. You say you talked to him. You ought to try to remember what happened.

A. Naturally, I would take the question up with him. I had not any agreement from him then to cancel the fruit jar rights, and nothing signed from him; really no definite commitment on his part; and of course I saw him some time after that letter, but where, when, how, I cannot tell you.

[fol. 1948] Q. I am waiving for the present where and when; but I should like to know what was said by you? What did you say to him, and what did he say to you?

A. I cannot any more than tell you we undobutedly commenced negotiating with each other as to whether, and for what price, and under what conditions, the General Glass would give up that right.

Q. You do remember seeing him?

Mr. Haight: He so told you four times.

Mr. Isseks: I will stipulate once, but I will not stipulate four.

Mr. Haight: I will compromise on three.

Q. You thought this matter so important you said it would be suicidal——

Mr. Haight: No, he did not say that; Mr. Levis said that; do not misquote.

Mr. Isseks: I am sorry.

Q. You are quoting Mr. Levis?

A. Yes, sir.

Q. Mr. Levis said it would be suicidal?

A. The remarks I said in that letter——

Q. No one was talking about personal suicide?

A. No, sir.

Q. Business suicide?

A. That is correct.

Q. There is only one Levis, called William or Bill?

A. That was Mr. Levis, the president of Owens Company.

Q. It was not any other gentleman?

[fol. 1949] A. No, sir.

Q. All you remember is that you saw Mr. Collins?

A. I know I must have seen him. How could I make arrangements to buy back those rights if we had not negotiaated, either by letter of by conference?

Q. What is your recollection—letter or conference?

A. My guess would be by conference.

Q. By guess, you mean your best recollection?

A. Yes, sir.

Q. Was anybody else present?

A. I could not tell you, Mr. Isseks.

Q. You say your mind is completely blank as to what transpired at the conference between you and Mr. Collins after you sent this letter?

A. We finally came to a definite agreement to repurchase from the General Glass Company these fruit jar rights for the sum of $100,000.

Q. Was anybody else present at the conference?

A. That I don't remember.

Q. Was Mr. McNash there?

A. I don't remember. He might have been.

Q. Was Mr. Levis there?

A. I have no recollection. He might have been.

Q. Was anybody there from the Hocking Company?

A. Mr. Collins.

Q. Besides Mr. Collins. I am sorry. I assumed Mr. Collins was there.

A. That I cannot tell you.

[fol. 1950] Q. Was anybody else there from your company?

A. I could not even tell you that.

Q. Was anybody there from the Corning people?

A. I would say not.

Q. Are you clear about that?

A. I have no recollection. The Corning people did not enter these negotiations except very seldom.

Q. They, of course, were the largest single stockholder in your company?

A. No, the Empire-Machine Company.

Q. I am sorry; the Empire Machine Company was the largest single stockholder in your company?

A. Yes, sir.

Q. Did anybody from the Empire Machine participate in the negotiations?

A. I would say not.

Q. You say in this letter, first, they are willing—referring to Ball Brothers—to consider a very sizable sum in payment of damages?

A. Yes, sir.

Q. But you say they paid $400,000 for the residual rights?

A. There was also a question of how much of that was damages and how much for the rights.

Q. You say damages: which was it?

A. I think it went on our books some to damages and some to rights. I have forgotten.

Q. It was an accounting matter?

A. Yes, sir.

[fol. 1951] Q. Ball Brothers never admitted that they infringed your patents, did they

A. I do not ever remember their saying to me: "Mr. Smith, we infringed your patents".

Q. All right—in any piece of paper, so far as you know?

A. On the final agreement, they might have admitted it. I don't know.

Q. As far as you know, have they ever admitted, to this day, that they infringed your patents?

A. I have forgotten what they say in the contract—whether they admit that or not.

Q. Ball Brothers also refused to give you title to their equipment?

A. That is true.

Q. To this day they still have title to the equipment which you say infringes your patents?

A. That is correct; but they pay royalties.

Q. They refused to give you title?

A. They did.

Q. The only companies were Hazel-Atlas and Ball Brothers that refused flatly.

A. I think that is right.

Q. I understand Capstan, which is part of Anchor-Hocking, may have some few pieces of equipment they still have title to?

A. I would not know.

Q. You do remember about Ball Brothers and Hazel?

[fol. 1952] A. Yes, sir.

Q. You say in the bottom of the first page of Government's Exhibit 178: "I told them"—which is Ball Brothers—"I thought you"—Mr. Collins—"would be entirely willing to fulfill your promise to Messrs. Levis and McNash made at White Sulphur Springs namely that General Glass would cancel their rights inasmuch as the fruit jar business is a special business and one which takes a great deal of money and a special organization to handle on any basis which could possibly be considered as profitable." Where did you get the information which you set forth in the letter?

A. I would not know whether it was by letter, telephone, or that I happened to meet Mr. Levis and Mr. McNash. I cannot tell you just how I got it. I apparently got it.

Q. You got it from either Mr. McNash or Mr. Levis?

A. I would assume so.

Q. Did the gentleman or gentlemen who told you what I just read tell you how long prior to the date of the letter, October 19, 1932, they met Mr. Collins at White Sulphur Springs?

A. No, sir.

Q. It was fairly recently though, was it not?

A. It must have been.

Q. In other words, it was some time after July 21, 1932, when you gentlemen made the agreement?

A. I think so.

Q. So that between July 21, 1932, and October 10, 1932, [fol. 1953] approximately three months, you were told by either Mr. Levis or Mr. McNash, or both, that they saw Mr.

Collins at White Sulphur Springs, and he agreed to do what you say they told you?

Q. That is you best recollection?

A. I have not any real recollection, except what I state in the letter.

Q. You say you talked that morning with Mr. Levis: you don't remember whether that was by telephone or face to face?

A. No, I have not any idea.

Q. Mr. Levis told you he was going to talk to Mr. Collins by telephone; that is what you say in the letter?

A. If that is what I say, it is probably what happened, Mr. Isseks.

Q. Then Mr. Levis told you, "he felt it was most necessary that Ball Brothers become a licensee and that it would be suicidal to put up any barriers which would mean that Ball Bros. were on the outside and had to be dealt with in an unfriendly rather than a cooperative and friendly way". Do you remember now Mr. Levis telling you that?

A. I don't remember, but he probably did.

Q. You would not have put it in the letter, if he did not say so?

A. I don't think so.

Q. You are not trying to put Mr. Levis's words in word for word?

[fol. 1954] A. Oh, no.

Q. He must have expanded on what he had in mind by "suicidal"?

A. I cannot tell you. There is my letter. That is what I wrote.

Q. Did you adopt Mr. Levis's language?

A. I have not any idea.

Q. You repeated it, anyway?

A. Yes, supposedly.

Q. Did Mr. Levis tell you what he meant by "suicidal"?

A. No, he did not explain that.

Q. We all know what it means, though.

A. Oh, yes.

Q. It means you cut your throat?

A. Not necessarily. You may shoot yourself.

Mr. Isseks: Your Honor, at this time I should like to have marked a carbon copy. This is an original document furnished us last night or this morning. I think Your Honor must have it in the book. It is a telegram dated October 17, 1932, from the witness to Mr. Ball.

The Clerk: Government's Exhibit 179.

Mr. Isseks: This was furnished us by counsel for Hartford, I believe yesterday.

Q. I ask the witness whether he remembers sending that telegram in the regular course of business to Mr. Ball?

A. I do not deny sending that. I do not happen to remember it. I do not deny it.

(fol. 1955) Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Mr. Isseks: I should like to have it read.

(Thereupon Government's Exhibit No. 179 was read to the Court by Mr. Kramer, of counsel for the government.)

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit 180, a copy of a letter dated October 17, 1932, from the witness to Mr. Frank C. Ball; a copy to Mr. McNash. The copy which *are* are marking in evidence has been stipulated as a genuine document by the Hazel-Atlas Company.

Q. I ask you whether you wrote that letter?

A. I have no reason to doubt it. I don't remember it.

Mr. Isseks: I understand, Your Honor, that the carbon copy of the letter was in the files of Hartford.

Mr. Wall: That is correct.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, over objection.

(Thereupon Government's Exhibit 180 was read to the Court by Mr. McCracken, of counsel for the government.)

Mr. Isseks: Your Honor, at this time I should like to mark as Government's Exhibit No. 181 a letter dated December 22, 1932, from the witness to Mr. F. C. Ball, copy to Mr. McNash. The copy which has been marked has been stipulated as genuine by the Hazel-Atlas Corporation.

[fol. 1956] Q. I will ask you to read that, Mr. Smith, and advise us whether you wrote that letter?

Mr. Isseks: I should like to have the record show that Mr. Wall's copy, which is the carbon copy in the files of Hartford, shows that a copy also went to Mr. Levis.

The Court: Very well.

Q. Have you read the letter?

The Witness: I have no reason to doubt that I wrote the letter.

Mr. Isseks: I offer it in evidence.

Mr. Middleton: Objection.

The Court: It may be admitted, over objections.

(Thereupon, Government's Exhibit No. 181 was read to the Court by Mr. McCracken, of counsel for the government.)

(Morning recess.)

The Court: You may proceed.

Q. Mr. Smith, I show you Government's Exhibits Numbers 180 and 181; I direct your attention to the fact that in the last sentence of Government's Exhibit No. 180 you say:

"I think you will appreciate, Mr. Ball, it is therefore very important that you have a conference with Messrs. Levis and McNash this week before Mr. McNash leaves for the coast".

That letter is dated October 17. The next letter is dated two months later. Do you remember whether you had a conference in between with the Ball people, Mr. McNash, Mr. Levis and yourself?

[fol. 1957] A. I don't remember, Mr. Isseks.

Q. Looking at Government's Exhibit No. 181, do you not remember that between the writing of the two letters, there was a conference at which Ball Brothers said something would have to be done about Underwood?

A. There may have been.

Q. At that time they said something would have to be done about Monaca?

A. I don't remember.

Q. Look at Government's Exhibit 181, December 21, 1932, leter. Look at Government's Exhibit No. 180: that is October 17, 1932. Then December 22, 1932, is No. 181. You say in Government's Exhibit No. 181 that, as to Underwood, the fourth paragraph: "Mr. Underwood will be in Hartford before long to go over this matter with us, but fruit jars are out". You say that, do you not?

A. I do.

Q. Of course you knew at that time, did you not, under your August 25, 1932, agreement with the Knox Companies, you had refused to give them any fruit jar rights for domestic, household use in connection with feeders?

A. I think that is true.

Q. You could not give them any right on suction machines, could you?

A. No, I don't think so; no, we had nothing to do at that time with suction machines.

Q. You already had a contract with Mr. Underwood's company, dated August 25, 1932, Government's Exhibit No. [fol. 1958] 151, in which, under the exclusions his companies were precluded from using your machinery for fruit jars?

A. I think that is correct.

Q. Then in Government's Exhibit 181, you also say, on the second page, the first full paragraph: "The easiest thing we could do would be to license Kerr, Brockway, Underwood, Monaca, and five or six more concerns in the east and south, as well as on the coast". At that time you did tell, December, 1932, Mr. Underwood you would not give him any rights for fruit jars?

A. Yes; but we could have; we were in position to do so, if we desired.

Q. As to these other people that came in, namely, Lamb came in November 10, 1932, Exhibit No. 152; Universal, September 15, 1932, Government's Exhibit 154; Maywood, December 16, 1932, Government's Exhibit No. 157; and Latchford, December 7, 1932, Government's Exhibit No. 159: in every case you turned them down for fruit jars, did you not?

A. We did not give them any rights in fruit jars. Some asked and others did not.

Q. But in any event you excluded all those people?

A. We did.

Q. So that when you were writing to Ball in December, 1932, at least as to Knox, Latchford, Universal, Maywood and Latchford, you had already excluded those new licensees from using machinery on fruit jars?

A. That is correct.

[fol. 1959] Q. You had in mind, in connection with those negotiations, did you not, that you might make a deal with Ball Brothers?

A. Yes, I always assumed Ball Brothers to be the logical one to have our fruit jar rights.

Mr. Isseks: Your Honor, at this time I should like to have marked—I have a copy—a letter. Perhaps counsel will furnish me a photostat. My copy is dated December 23, 1932; from Mr. Eldred to Mr. Underwood. We have a typed copy which has been furnished us by Mr. Underwood.

Mr. Wall: What is it, from Mr. Eldred to Mr. Underwood?

Mr. Isseks: Yes.

Your Honor, I now offer a two page letter, dated December 23, 1932, from Mr. Eldred to Mr. Underwood. The copy your Honor has is one page, and that is the way it was furnished us by Mr. Underwood. I now have that marked as Government's Exhibit No. 182. I offer it in evidence.

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[fol. 1960] The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 182 was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit 183 a photostat of [fol. 1961] a copy of a letter dated December 24, 1932, from Mr. Underwood to Mr. Eldred, in reply to the previous exhibit. The photostat has been furnished me by counsel for Hartford, and shows on the face of it that it comes from the files of Hartford. The photostat I have marked in evidence has two pages. Your Honor's copy, which we obtained elsewhere, has only one page. On the photostat there is an indication, which is not on Your Honor's copy, that copies went to Messrs. Smith, Brown and Safford.

I should also like to mark, as Government's Exhibit No. 184, Mr. Eldred's reply to Mr. Underwood, dated December 27, 1932. That photostatic copy has been furnished by counsel for Hartford, and is identical with the copy which Your Honor has.

• • • • • • •

[fol. 1962] I offer Government's Exhibit No. 183, which is Mr. Underwood's reply to Mr. Eldred's letter.

The Court: It may be admitted, over objection.

Mr. Isseks: I am withdrawing, physically, Government's Exhibit No. 184. I will have a new No. 184 in a minute.

Thereupon, Government's Exhibit No. 183 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 1963] Mr. Isseks: Your Honor, at this time I should like to have marked an original letter which has been furnished us by Mr. Underwood. It is dated January 10, 1933, and is from the witness to Mr. Underwood. It is Government's Exhibit No. 184. I took out the other Exhibit No. 184, physically.

Mr. Emery: If the Court please, may we have for the record as to each of these the same objection which I made to the first of this series of correspondence?

The Court: Yes.

Q. Mr. Smith, did you write that letter?

A. I did.

Q. That is your signature on the original letter?

A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Middleton: May we have that identified again please?

Mr. Isseks: January 10, 1933.

Mr. Middleton: From whom to whom?

Mr. Isseks: Mr. Smith to Mr. Underwood.

I offer it in evidence.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 184 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, do you remember that Mr. Underwood did come to Hartford in pursuance of your request?

A. I don't remember it. I have no reason to doubt it.

[fol. 1964] Q. Do you have any recollection of the conference you had with him?

A. No, sir.

Q. None at all?

A. No, sir.

Mr. Isseks: Your Honor, at this time, I should like to have marked a photostatic copy of a memorandum which is dated January 18, 1933, which purports to be written by the witness. The copy furnished me, the photostat, by Mr. Wall has two pages of memorandum typed with some handwritten notes; and then an extra page of handwriting which I should like to reserve the right upon, Your Honor. I

Mr. Isseks: Your Honor, at this time I should like to have marked—I have a copy—a letter. Perhaps counsel will furnish me a photostat. My copy is dated December 23, 1932; from Mr. Eldred to Mr. Underwood. We have a typed copy which has been furnished us by Mr. Underwood.

Mr. Wall: What is it, from Mr. Eldred to Mr. Underwood?

Mr. Isseks: Yes.

Your Honor, I now offer a two page letter, dated December 23, 1932, from Mr. Eldred to Mr. Underwood. The copy your Honor has is one page, and that is the way it was furnished us by Mr. Underwood. I now have that marked as Government's Exhibit No. 182. I offer it in evidence.

• • • • • • •

[fol. 1960] The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 182 was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit 183 a photostat of [fol. 1961] a copy of a letter dated December 24, 1932, from Mr. Underwood to Mr. Eldred, in reply to the previous exhibit. The photostat has been furnished me by counsel for Hartford, and shows on the face of it that it comes from the files of Hartford. The photostat I have marked in evidence has two pages. Your Honor's copy, which we obtained elsewhere, has only one page. On the photostat there is an indication, which is not on Your Honor's copy, that copies went to Messrs. Smith, Brown and Safford.

I should also like to mark, as Government's Exhibit No. 184, Mr. Eldred's reply to Mr. Underwood, dated December 27, 1932. That photostatic copy has been furnished by counsel for Hartford, and is identical with the copy which Your Honor has.

• • • • • • •

[fol. 1962] I offer Government's Exhibit No. 183, which is Mr. Underwood's reply to Mr. Eldred's letter.

The Court: It may be admitted, over objection.

Mr. Isseks: I am withdrawing, physically, Government's Exhibit No. 184. I will have a new No. 184 in a minute.

Thereupon, Government's Exhibit No. 183 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 1963] Mr. Isseks: Your Honor, at this time I should like to have marked an original letter which has been furnished us by Mr. Underwood. It is dated January 10, 1933, and is from the witness to Mr. Underwood. It is Government's Exhibit No. 184. I took out the other Exhibit No. 184, physically.

Mr. Emery: If the Court please, may we have for the record as to each of these the same objection which I made to the first of this series of correspondence?

The Court: Yes.

Q. Mr. Smith, did you write that letter?

A. I did.

Q. That is your signature on the original letter?

A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Middleton: May we have that identified again please?

Mr. Isseks: January 10, 1933.

Mr. Middleton: From whom to whom?

Mr. Isseks: Mr. Smith to Mr. Underwood.

I offer it in evidence.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 184 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, do you remember that Mr. Underwood did come to Hartford in pursuance of your request?

A. I don't remember it. I have no reason to doubt it.

[fol. 1964] Q. Do you have any recollection of the conference you had with him?

A. No, sir.

Q. None at all?

A. No, sir.

Mr. Isseks: Your Honor, at this time, I should like to have marked a photostatic copy of a memorandum which is dated January 18, 1933, which purports to be written by the witness. The copy furnished me, the photostat, by Mr. Wall has two pages of memorandum typed with some handwritten notes; and then an extra page of handwriting which I should like to reserve the right upon, Your Honor. I have never seen it before. I should like to reserve the right to either offer it or withdraw it. I do not know what it means. At an appropriate time, I may want to withdraw it. I should like to have the entire document marked. All I offer are the first two pages, which Your Honor has before you:—marked Government's Exhibit No. 185.

Q. Mr. Smith, I show you Government's Exhibit No. 185, which purports to be a memorandum written by you of a conference you had with Ball Brothers on January 18, or at least the memorandum was written January 18; and I ask you to read it and to advise us whether you wrote that memorandum?

(Witness reads memorandum.)

Q. Did you write that?

A. I have no reason to doubt it, Mr. Isseks.

Q. Do you not remember that you had a conference with Ball Brothers before you wrote it?

[fol. 1965] A. I must have, yes.

Q. Whose handwriting is that on the left hand side of the first page?

A. I cannot tell you.

Q. Whose handwriting is that on the second page?

A. That I would not know.

Mr. Haight: Do not whisper, Mr. Smith.

The Witness: I do not recognize the handwriting on the first page. It looks something like Mr. Safford's; and yet it does not.

Q. How about the second page?

A. I should have to reply the same as to the second page. It may be Mr. Safford's; but it is not the way he usually wrote.

Mr. Isseks: Is there any question about whose handwriting it is, Mr. Wall?

Mr. Wall: I will have to take the witness's statement on that. I cannot add anything to it.

Mr. Isseks: Your Honor, at this time all I offer is the typewritten portion, and will reserve any offer with regard to the handwriting until some other time. All Your Honor has before you is the typewritten portion.

The Court: That is right.

It may be admitted, over objection.

Thereupon, Government's Exhibit No. 185 was read to the Court by Mr. Lewis, of counsel for the government.

[fol. 1966] Q. Mr. Smith, the memordanum says the purchase price is $500,000.00. You said before $400,000.00. I don't know what it was. I just want to straighten it out.

A. It was 400,000. Our figure was 500,000. Finally as negotiated—in the final negotiations it was 400,000.

Q. Of that 400,000 you paid $100,000.00 to General?

A. Correct.

Q. You have a paragraph here if Ball Brothers should continue to use their present gob feeder, title must be assigned to Hartford. You gave in on that?

A. Yes.

Q. In other words, they said they refused to give you title and you said all right?

A. That is correct.

Mr. Isseks: I offer at this time Exhibit 186, unsigned memorandum dated 1-20-33 and apparently appearing on the original the words, "Ball Brothers deal 1932-1933". It has been stipulated as coming from the files of Hartford.

Q. I will show you Exhibit 186 and ask you whether you wrote it?

A. No. I am quite sure I did not, Mr. Isseks.

Q. You are not sure, you say?

A. I am quite sure I did not.

Q. Do you know who wrote it?

A. I haven't the least idea.

Mr. Isseks: Your Honor, at this time I am not going to offer the document, but I would like to retain the number. I would like to wait until Mr. Safford takes the stand, if [fol. 1967] he does. If he does not take the stand, I reserve my right to offer it later on.

Your Honor, at this time I would like to have marked, a carbon copy, this is an original carbon copy of a letter dated January 21, 1933, from the witness to Mr. McNash. I don't know whether it is in Your Honor's book. I would like to have it marked as Government's Exhibit 187.

Q. Mr. Smith, I will ask you whether you wrote that letter to Mr. McNash?

A. I have no reason to doubt it, Mr. Isseks.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

Mr. Schaeffer: I think, if Your Honor please, we would like the record to show at this time Mr. McCallister was not representing Ball Brothers in their negotiation with the Hartford-Empire and there is a reference in this letter of Mr. Hornbrook, who is an Indianapolis attorney who represented Ball Brothers in this negotiation.

The Court: Very well.

(Reading Exhibit 187.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 188, a reply from Mr. McNash to Mr. Goodwin Smith, dated January 25, 1933. The document that we offer is a photostatic copy of the original and it has been stipulated as a genuine document by Hartford.

[fol. 1968] Q. I will show you Government's Exhibit 188, Mr. Smith, and ask you whether you identify the signature thereon?

A. That is the signature of Mr. McNash.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted over objection.

(Reading Government's Exhibit 188.)

Q. Mr. Smith, you will notice that in Government's Exhibit 188 Mr. McNash says to you, "I have your letter of the 21st"—that is Government's Exhibit 187—"and your telegram today in connection with Ball Brothers." Do you remember what your telegram said?

A. No.

Q. Your counsel has been unable to locate in your files, your copy of the telegram. You have no recollection at all about it?

A. No. I have none. It might refer to some future meeting or something of that sort.

Mr. Isseks: We did not have an opportunity outside of court to ask counsel for Hazel-Atlas. I would appreciate if Hazel-Atlas would make an effort to locate the telegram.

The Court: They may locate it if they can.

Q. You will notice in Government's Exhibit 187, which is the letter you wrote Mr. McNash on January 21st, in the paragraph that I am showing you,—I think it is the fourth paragraph,—you say, therefore so far as you and Bill are concerned,—that is Mr. Levis, isn't it?

A. Yes.

[fol. 1969] Q. I see no demands on your time until the following week. Inasmuch as the Container Association meets the following week it would seem everybody could get together then and wind up these troublesome negotiations. Do you remember going to the Container Association Meeting that year?

A. No. I never went to the Container Association. We were never a member except a sub-member. We never had any vote or never attended their meetings.

Q. You did not go to the hotel where the Container Association was meeting?

A. No.

Q. Or to the building?

A. No. I think I have been in the building once.

Q. You went to New York when they met, didn't you?

A. Oh yes, because it saved them a trip from the west to the east and usually if we had any cause to meet, rather than make two trips back and forth, if a meeting of the Container Association takes place I would say "I will meet you after that meeting".

Q. At some hotel?

A. Yes.

Q. Do you remember in '33 meeting Mr. McNash, Levis and somebody from Ball, during the Container Association Meeting?

A. I would not pin it at that particular meeting, but I did meet those gentlemen in New York at the Biltmore Hotel several times during these negotiations.

[fol. 1970] Q. Mr. McNash, in his letter, Government Exhibit 188, talks about the type of jar used in the bootleg trade. He did not mean "bootleg" in the sense of illegal liquor?

A. He must have.

Q. Look at it?

A. If you will let me explain, as far as I know what happened, in the South a lot of jars were being sold by the grocers and those jars did find their way into the bootleg trade, liquor trade.

Q. Oh, I see. Illicit liquor trade. I did not realize that. Then he also talks about a third classification, a jar that was to be used—a plain jar used for all purposes rather than household fruit and jelly.

A. That was what you call a packer's jar.

Q. There were three different classifications, the ordinary fruit jar for domestic use, and then the one used for bootleg trade, and packers' ware used for fruit jars?

A. Packers' ware were filled with goods and some of those jars finally found their way into the household domestic trade.

Q. That is what Mr. McNash is talking about, three classes?

A. I think so.

Q. You are familiar with the industry, aren't you?

A. I don't know about the details of jars. In fact, I am wondering how I knew so much in this letter.

Mr. Isseks: At this time, Your Honor, I would like to have marked, first, two letters dated February 1, 1933. One is four pages. That is the one I will have marked [fol. 1971] Exhibit 189. They are both from the same people. You can distinguish them because they go to different hotels. The first one, Government's Exhibit 189, is dated February 1, 1933, four pages, from Mr. Carter, vice-president, Owens-Illinois, to Mr. C. B. Belknap at the Biltmore Hotel, New York City, entitled "Fruit Jar Limitations".

The next exhibit, Government's Exhibit 190, is dated the same day, between the same people, but it is two pages and it is addressed to Mr. C. B. Belknap at the Waldorf-Astoria Tower and it also has the heading, "Fruit Jar Limitations".

Your Honor, I offer both these documents in evidence. They are written by a vice-president to another officer of the company.

Q. Mr. C. B. Belknap is connected with Owens, is he not?

A. He was, and is, so far as I know.

Q. At the present time he is executive vice-president?

A. I think that is his title.

Q. Do you know what his duties were in 1933?

A. I don't know when he joined their organization. About that time. Suppose you ask Mr. Williams.

Mr. Williams: Sometime during the year. Sometime in 1933. Previously he was a member of the firm of Hulbert, Whittemore & Belknap.

Mr. Isseks: The only thing, was he an officer at that time?

Mr. Williams: I think not. I think some time later in the year.

[fols. 1972-1973] Mr. Isseks: Your Honor, I offer both documents in evidence.

The Court: They may be admitted over objection.

(Reading Exhibit 189.)

* * * * * * *

[fol. 1974] Mr. Isseks: I would like to have the next exhibit read, Exhibit 190.

(Reading Exhibit 190.)

Q. Now, Mr. Smith, do you recall that during these negotiations in New York in the early part of February there was a conference at which Mr. McNash and Frank Ball and George Ball had a discussion with regard to the limitation of production by Owens and Hazel-Atlas?

A. There were many such discussions, Mr. Isseks, and I think some rough drafts were formed, made up with those restrictions in.

The Court: I think you may suspend at this time.

(Noon recess.)

[fol. 1975] (At 2 o'clock p. m., March 13th, the hearing was resumed.)

Q. Mr. Smith, don't you remember that during these conversations between McNash, Levis, Ball Brothers and yourself, prior to the final arrangements, that Ball Brothers asked for the residual rights other than those to Hazel and Owens?

A. They did.

Q. Don't you remember also that the Ball Brothers wanted some restrictions placed upon Owens and Hazel?

A. They did.

Q. And don't you remember that during these conversations the atmosphere at times became very tense?

A. Well, I wouldn't doubt it. I don't happen to remember it.

Q. What is your recollection?

A. I just don't remember that.

Q. Don't you remember there were even questions of good faith raised by the various people?

A. No.

Q. Don't you remember that Mr. McNash took the position that before he would agree to any restriction that he would like to have an understanding as to what would happen in the case there was an unusual use of fruit jars for the domestic trade?

A. That is quite true.

Q. Don't you remember you were asked to set forth your recollection of the arrangement between the parties?

A. I don't happen to remember, but reading that over [fols. 1976-1977] this noon, it brought my memory back to the fact that I probably was.

Q. Now you talk about "that" and that makes it a little difficult to follow the record, so I will have "that" marked. I had in my hand a piece of paper, didn't I?

A. Yes.

Q. Somebody else has to read this, that is why I say that.

The memorandum, which he designated "that" is dated February 9, 1933, Government's Exhibit 191, and unsigned. It has on the top "Hartford-Empire Company Memorandum".

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[fol. 1978] Q. Will you refer to that document, which is Government's Exhibit 191?

A. I read it.

Q. You say you read it during the recess?

[fol. 1979] A. I did.

Mr. Isseks: Before I ask the witness a question I would like to have it read.

The Court: It may be admitted over objection.

Mr. Isseks: I will have copy read.

(Government Exhibit 191 read by Mr. Lewis.)

Q. Now, Mr. Smith, do you remember the incident? (Referring to Exhibit 191.)

A. I remember Mr. McNash taking that position, that if there was an extra-good year, canning year, and he had this restriction, he was going to supply his trade with fruit jars over and above the 300,000 gross which had been specified as his restriction.

Q. Do you remember Mr. McNash saying that in front of the two Ball brothers?

A. Yes, I think he did.

Q. And do you remember the Ball Brothers agreeing, confirming the understanding in your presence?

A. I think they did.

Q. Do you remember that Mr. McNash asked you to make a record of it and certify it?

A. I don't remember, but I don't deny that he did.

Q. And do you remember that you did certify it?

A. I don't think I did. After this paper came out in the TNEC, our files were searched and no memorandum or record could be found. I don't think I would have been apt to make that record until the contract was signed, as I didn't have the Herbert Smith habit of writing down these conferences or the details that took place in them.

[fol. 1980] Q. Do you remember directing your attention to the paragraph on the first page, nine paragraph, that Mr. McNash said he was willing to change his views to some extent with respect to Hazel-Atlas' position and restrict his license to 300,000 gross per year without any mention in the contract of any conditions modifying the amount?

A. I don't happen to remember that particular point. I don't deny after this conference there was an understanding about that. I think drafts were drawn of a contract.

Q. And the gentlemen in the room all agreed as to what the arrangement was?

A. At that time.

Q. Was Mr. Levis around?

A. I don't think he was at this meeting.

Q. Was Mr. Levis around during the negotiations?

A. I couldn't tell you, Mr. Isseks.

Q. Did the Owens Company at any time agree to a restriction of the 100,000 gross?

A. Well, I think they were willing to take the restriction to 100,000 gross, yes.

Q. Who on their behalf made that concession?

A. I think it was Mr. Levis.

Mr. Isseks: At this time, Your Honor, I would like to have marked three documents at one time, because they are all incorporated, by reference. The first one I am going to have marked is an original letter from Mr. Underwood to the witness dated March 4, 1933, as Government Exhibit 192. Then I will have marked, carbon copy of letter dated [fol. 1981] March 4, 1933, from Mr. Underwood to Frank

C. Ball, two pages, as Government Exhibit 193. Government Exhibit 194 is an original letter from the witness to Mr. Underwood dated March 7, 1933.

Q. Now, Mr. Smith, I show you Government Exhibit 192, and 193, and 194, and direct your attention to 194 and ask you whether that is your signature?

A. It is.

Q. And I ask you whether the documents enclosed are the enclosures that are referred to—192 and 193 are the enclosures referred to in Government Exhibit 194?

A. Mr. Isseks, may I correct some testimony I made this morning?

Q. Certainly.

A. I think I said to you that we had nothing to do with the Knox suction machine. We had no license agreement with the Knox Suction Machine, but Mr. Eldred's letter simply called to my mind that we had patents overlying that machine, and if that is what I said, I would like to correct what I said this morning.

Q. My question now is whether Government Exhibits 192 and 193 are the documents referred to by you in Government Exhibit 194?

A. I think these are all correct.

Mr. Isseks: I offer them in evidence, Your Honor.

The Court: They may be admitted over objection.

Mr. Isseks: I will have them read.

[fol. 1982] (Government Exhibits 192, 193 and 194 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to reserve a number, Government Exhibit 195, for copy of an agreement between Owens Bottle Company and Ball Brothers, dated November 2, 1924, relating to the right which Ball Brothers had under certain suction patents.

Mr. Middleton: What was the offer?

Mr. Isseks: I offer a contract dated November 2, 1924, between Owens Bottle Company and other companies connected with Owens, and Ball Brothers, relating to the use of Owens machinery.

Mr. Williams: That is the extension of the earlier agreement?

Mr. Isseks: That is right. I haven't the copy here. I will have it copied during the adjournment.

Mr. Middleton: With the Court's permission, that is not offered with the thought that it is still in force?

Mr. Isseks: No.

Mr. Middleton: The contract expired by its own terms June 6, 1933. I think the Court should have that in mind in connection with the offer.

Mr. Isseks: That is all right. That is true, Your Honor. The contract expired, and there were settlements after the contract, I am coming to.

I would like to offer Government Exhibit 196, which is a duplicate original, signed by Knox Glass Bottle Company and other companies associated with it—I won't read the [fol. 1983] names—five others—and Ball Brothers, signed on behalf of Knox Glass Bottle Company by McDowell, president, and on behalf of the Pennsylvania Bottling Company and others, Mr. Underwood; on behalf of Ball Brothers, F. C. Ball. The date of the contract is March 23, 1933. I would like to have it marked. I am going to read two paragraphs of it. That will be Government Exhibit 196. I would like to read two paragraphs; they are not very long:

"Parties of the first part"—that includes the Knox group —"hereby jointly and severally agree that they will not, directly or indirectly, including by means of any subsidiary or affiliated company, for a period of 15 years from the date hereof, engage in the manufacture and/or sale of fruit jars for domestic household use, or in caps or lids to be used in connection with jars, at any point in Continental United States of America, and for the same consideration, party of the second part hereby agrees that they will not for said period or within said territory, engage or become directly or indirectly interested in the manufacture of or sale of fruit jars and/or caps or lids therefor."

The rest of the paragraph relates to the definition of fruit jars.

Under paragraph 5—I won't read it—the party of the third part pays the first party and the party of the second part, $100,000.00 in consideration for the transfer and sale of certain property and in consideration of the other cove- [fol. 1984] nants in the contract.

I would like to next offer in evidence, Government Exhibit 197.

The Court: Just a minute. You are offering 196?

Mr. Isseks: Yes.

The Court: Is that certified?

Mr. Isseks: It is a duplicate original. If there is any dispute, it is stipulated as a copy of the genuine document.

The Court: You are offering in only the two paragraphs?

Mr. Isseks: I offer the entire document.

The Court: It may be admitted.

Mr. Sayles: Over objection?

The Court: Over objection.

Mr. Isseks: I offer Exhibit 197, which is a letter dated March 29, 1933, purporting to be written by one A. T. Safford, Jr., of the Knox Glass Bottle Company, attention of Roy R. Underwood. I will ask the witness a question about that.

Q. Is that Mr. Safford's signature?

A. It is.

Mr. Isseks: This is the original letter which was furnished us.

Mr. Goodrich: This is a surprise to us.

Mr. Isseks: I will show it to you. It is just a letter in which he says he waives the $44,000.00, that is all. I offer [fol. 1985] the original letter in evidence.

The Court: It may be admitted over objection.

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Q. Is that your signature on the photostat?

A. It is.

Q. That is the signature of Mr. Collins on the photostat?

A. I think it is, yes.

Q. Do you remember such an agreement was signed by you and General Glass Company?

A. We purchased the rights, yes.

Q. And you signed a contract, didn't you?

A. Yes.

Mr. Isseks: I offer the contract in evidence.

[fol. 1986] Mr. Fuller: We note both general and specific objections, Your Honor.

The Court: It may be admitted over objection.

Mr. Isseks: Your Honor, briefly, this contract provides for the payment of $100,000.00, which is written in the contract, there is a blank space, by Hartford to General Glass Corporation, in consideration of their amendment being made to the consolidated feeder agreement, by which there was deleted from their field in which they were entitled to use the feeder equipment, fruit jars for the domestic household trade.

I would like now to offer as Government Exhibit 199, a photostatic copy of an original agreement dated March 25, 1933, between Ball Brothers and Hartford-Empire Company. This photostatic copy of a copy, and not a photostatic copy of an original, is stipulated as genuine by Hartford-Empire Company on page 1 of the stipulation. It purports to be signed by the witness as the president of Hartford and by G. A. Ball as president of Ball Brothers. This is the contract to which the witness has made reference in his testimony.

Mr. McCallister: We will join in the stipulation as to the genuineness. Is that the main license agreement entered into on that day?

Mr. Isseks: Yes, sir. I offer it into evidence.

The Court: It may be admitted over objection.

Mr. Isseks: I next offer in evidence photostatic copy of a duplicate original of an agreement dated April 27, 1933, [fol. 1987] between Brockway Machine Bottle Company and Robert L. Warren, as parties of the first and second part, and Ball Brothers, by William H. Ball, secretary, party of the third part. I believe there is a stipulation as to the genuineness of this document by the defendant Ball Brothers. I would like to have it marked Government Exhibit 200.

(So marked.)

Mr. Middleton: Objection, if the Court please.

Mr. Isseks: I offer that agreement in evidence.

The Court: It may be admitted over objection.

Mr. Middleton: What is the nature of that agreement?

Mr. Isseks: I am going to tell you. It is dated April 27, 1933. Paragraph 3 of this contract is substantially identical with the paragraph of the Knox and Underwood agreements that I read, namely that the party of the first part,—which would be the Brockway Machine Bottle Company,—agrees not to directly or indirectly, or through any subsidiaries, engage in the manufacture and sale of fruit jars for domestic household use, for a period of 15 years.

Mr. Haight: The sale of assets?

Mr. Isseks: Well, there was also in connection with this contract the sale of certain assets by Brockway to Ball Brothers, and my notes here, subject to correction, show that Ball Brothers paid Brockway $54,000.00 in connection with the agreement, and paid an additional $120,000.00 in connection with the purchase of certain fruit jar inventory [fol. 1988] of Brockway, which was not a sale of the business in that sense that the Brockway went out of the business, but a sale of certain inventory and equipment used in connection with the manufacture of fruit jars.

Q. Now, Mr. Smith, do you recall that at the time you made your agreement with Ball Brothers with respect to fruit jars, you did have a licensee called Gayner Glass Works that was entitled to use your equipment in connection with the manufacture of a limited quantity of fruit jars, namely 120,000 gross a year?

A. I think that is true.

Mr. Isseks: Your Honor, I am not going to take the time to offer the actual contract, because it is long, and it generally has the same license provisions as others.

Q. I would like to ask the witness whether he recalls the contract expired sometime shortly after March 25, 1933, when you made your contract with Ball Brothers?

A. Well, I don't happen to recall it.

Mr. Isseks: Cannot we agree the contract expired at the end of December, 1934?

Mr. Haight: I don't know anything about it.

Mr. Isseks: Judge Goodrich says it is right. If it is wrong we can correct it. It expired, according to my notes, December 24, 1934, by limitation.

Mr. Goodrich: 1934—I don't remember the date.

Mr. Isseks: If we are wrong we can have it corrected.

[fol. 1989] Q. Do you remember, Mr. Smith, thereafter, 1935, Hartford gave the Gayner Glass Works a new license?

A. I think I do.

Q. Do you remember in connection with the new license you specifically included among the exclusions, fruit jars?

A. Why, yes, we had sold the residual rights to Ball Bros.

Q. But after the manufacturing license expired you didn't give them a right to manufacture fruit jars even to a limited extent?

A. No.

Q. You felt you could not?

A. Right.

Q. Mr. Smith, do you remember after you made your contract of March 25, 1933, with Ball Brothers, every now and then executives of the Ball Bros. Company communicated with you about different companies in the country putting out what they said were fruit jars?

A. Oh, yes, a number of such letters.

Q. One of the Ball Brothers was writing to you right along?

A. Yes.

Q. Complaining, wasn't he?

A. Yes.

Q. He wanted you to police the situation?

A. If that is what you call it. He wanted to see to it none of our licensees who had no right to produce domestic household fruit jars did product them.

Mr. Isseks: I would like to have marked as Government Exhibit 201, a letter dated May 3, 1933, written by F. C. [fol. 1990] Ball, president of Ball Brothers, to the witness. It is stipulated as a genuine document by Ball Brothers. Do you have the original, Mr. Wall?

Mr. Wall: Yes sir.

Mr. Isseks: I will exchange with you. I would like to have this one marked 201. We have the photostat of the original.

Q. I hand you, Mr. Smith, a photostatic copy of original letter dated May 3, 1933, from Mr. Ball to you, and ask you whether you recognize the signature of Mr. Ball?

A. That wasn't his signature.

Q. On that particular document it is not?

A. No.

Q. Did you get that letter from Mr. Ball in the regular course of business? The letter purports to be signed by him, doesn't it?

A. I think so, but it is not his signature.

Q. Did you receive the letter from Mr. Ball?

A. I have no doubt I did.

Mr. Isseks: Your Honor will note the original purports to be signed by Mr. Ball but the witness says it is not his signature. In the left-hand corner there is an indication it was dictated by Mr. Ball, but apparently not signed by him. I offer it in evidence.

The Court: It may be admitted over objection.

Q. Mr. Smith, do you recognize the handwriting up in the right-hand corner, where it says: "1, 2, 3, 4, 5—Kerr, McCallister, Shawkey, Gayner, Three Rivers"; whose hand- [fol. 1991] writing is that?

A. I cannot tell you off-hand.

Q. That certainly was not on the original when you got it?

A. No.

Q. Put on by somebody at Hartford?

A. Probably.

Q. Mr. Smith, does that indicate copies were written for somebody in the regular course of business in your company?

A. No, I don't think so.

Q. Kerr, the first name mentioned there, was whom?

A. I suppose that referred to Kerr Glass Company.

Q. They were manufacturers of fruit jars?

A. Correct.

Q. That is all they made, as far as you know?

A. As far as I know.

Q. McCallister is the gentleman in the court room, representing Ball Brothers, I assume?

A. It may be safe to assume that.

Q. And Shawkey, who was he?

A. Shawkey was a feeder that was developed later on, which infringed our rights. I would not know what connection Shawkey had.

Q. And Gayner, another name on there, was who?

A. A licensee of Hartford.

Q. The Company you just mentioned?

A. Yes.

Q. And Three Rivers was the name of the Company he refers to in the letter?

[fol. 1992] A. Correct.

Q. Who was Three Rivers?

A. Three Rivers was a licensee located in Three Rivers, Texas.

Q. A licensee of yours?

A. Yes.

Q. Did it have the right to manufacture fruit jars on your machinery?

A. No.

Mr. Isseks: I would like to have the letter read.

(Mr. Kramer thereupon reads Government Exhibit 201.)

Q. Mr. Smith, what did you do about it?

A. Well, I probably wrote Three Rivers that they were infringing their (Ball's) rights.

Q. The fruit jars we are talking about are the ordinary fruit jars?

A. For the domestic household trade.

Q. What was Three Rivers doing; were they making a general line of bottles and jars, and just took an ordinary packerware bottle and apparently put it out on the market as a fruit jar?

A. They may have been doing that or they may have been making a regular fruit jar.

Q. Did you ever find out what they were doing?

A. I suppose we did.

Q. Do you remember?

A. No.

[fol. 1993] Mr. Isseks: At this time I would like to have marked original letter dated January 21, 1935, from Mr. F. C. Ball to the witness, Mr. F. Goodwin Smith.

Q. Mr. Smith, I show you this Exhibit 202, and ask you whether or not that is Mr. Ball's signature?

A. That is.

Q. This one is?

A. Yes.

Mr. Isseks: Does Your Honor want to look at it and see why it is so different?

I offer it in evidence.

The Court: It may be admitted over objection.

(Government Exhibit 202 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to offer a letter which bears date "January 23, 1934" but Mr. Wall tells me it should be "35".

Mr. Wall: That is correct. If it is the letter we were just looking at.

Mr. Isseks: It is the same one we were looking at. It is apparently mis-dated, and should be in reply to the letter which we just read. This is from the witness to Mr. Frank C. Ball, and I will mark the Exhibit "1935". I have changed the copy. I would like to have it marked as the next exhibit, 203.

The Court: From whom to whom?

Mr. Isseks: From the witness to Mr. Frank C. Ball, dated January 23, 1935.

Q. I ask you to read that, Mr. Smith, and tell us whether [fol. 1994] you wrote it?

A. I don't doubt it, Mr. Isseks.

Mr. Isseks: I offer it in evidence.

The Court: It will be admitted over objection.

Mr. Isseks: I would like to have it read, please.

(Said Government Exhibit 203 read by Mr. Lewis.)

Q. Of course you would have a lot of influence, wouldn't you?

A. Why——

Q. Your Company—in deciding what the license would be?

A. Yes.

Mr. Haight: I don't think that is what the letter refers to. The letter was questioning whether he could do anything.

Mr. Isseks: I see.

I would like to have marked at this time Government's Exhibit 204, photostatic copy of original letter, stipulated as genuine by Hartford, from F. C. Ball, president of Ball Brothers, to the witness, dated February 25, 1935.

Q. Did you received that letter in the regular course of business?

[fol. 1995] A. I think I did, Mr. Isseks.

Mr. Isseks: Your Honor, I offer it in evidence.

The Court: It may be admitted.

The Witness: Once again, that is not Mr. Ball's signature.

Mr. Isseks: The witness points out, again, on this particular document it is not Mr. Ball's signature. The document says: "F. C. Ball"; and I cannot make out the rest.

Mr. McCallister: We will stipulate it as a genuine document.

Thereupon, Government's Exhibit No. 204 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, did you ever have occasion to have the problem of giving Three Rivers a new license?

A. I think we did re-license them.

Q. Did you exclude fruit jars from the field of ware?
A. Oh, yes.

Mr. Isseks: Your Honor, I should like to read in now, if counsel will permit me, this License and Lease, to the Gayner Glass Works, Salem, New Jersey, December 31, 1935; which is a printed document, and of which we have the original in front of me;—solely for the definition of fruit jars, among the "Exclusions".

Mr. Wall: While we are on the subject, had we not better clear up the date; July 1, 1934?

Mr. Isseks: That is right. Rather than offer this entire contract—it is in printed form—I should like to show [fol. 1996] merely the date of this contract: December 31, 1935, on the "Exclusions".

* * * * * * *

Q. Referring to Government's Exhibit No. 204, you heard what I read, did you not?
A. Yes, sir.
Q. You did not adopt Mr. Ball's definition, did you?
A. Somewhat; it sounds like it to me; it did not mean a great deal, anyway.
Q. Not the exact language?
[fol. 1997] A. No, sir.
Q. But somewhat?
A. Yes, sir.

Mr. Wall: This is dated December 31, 1935.
Mr. Isseks: That is right.
Mr. Wall: Not the continuation.
Mr. Isseks: Oh, no, not the continuation.
Q. I direct your attention to the fact that the date of the document from which I read is December 31, 1935; the date of the Ball letter, Government's Exhibit No. 204, is February 25, 1935: at least after December 31, 1935, you used that definition of fruit jars, did you not?
Mr. Haight: You mean the definition——
Mr. Isseks: In the Gayner contract, December 31, 1935?
A. I don't think so. I think that definition may have gone in a few contracts, but I don't think from then on we adopted it as standard in all our contracts.
Q. But you say it may have gone into some contracts?
A. Yes. I would not remember, Mr. Isseks.

Q. There is reference in this letter, Mr. Smith, Government's Exhibit No. 204, in the first paragraph, to correspondence in connection with the proposed license agreement between your company and Kerr Company. Did you have such correspondence?

A. Yes, sir.

Q. The Kerr Company was an outsider, was it not?

A. That is correct.

Q. You took the position, did you not, that they were in- [fol. 1998] fringing your patents?

A. No. I personally was not in the negotiations, but the members of our organization did have negotiations with the Kerr Glass Company, to see if they would not want to put in Hartford equipment. Now, if they were going to put in Hartford equipment, we would have had to obtain permission from Ball Brothers to license Kerr on fruit jars.

Q. I think you testified that Kerr was primarily a fruit jar manufacturer?

A. That is true.

Q. Did you ever claim that Kerr was using equipment that infringed your equipment?

A. I don't think so.

Q. You never sued them?

A. No, sir.

Q. You never even claimed they infringed?

A. No; I don't think they did.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 205, a photostatic copy of a letter from Mr. R. M. Eldred, general manager of Hartford-Empire Company, dated July 5, 1933, and addressed to Mr. C. H. Hubbard, care Alexander H. Kerr Company. This is stipulated to be a photostatic copy of a genuine document, by Hartford.

Mr. Eldred, you will recall, has been identified. And the witness has identified the Alexander H. Kerr Company. [fol. 1999] I offer Government's Exhibit No. 205 in evidence.

The Court: It will be admitted, over objection.

Thereupon, Government's Exhibit No. 205 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, you testified a few minutes ago that before you could give Kerr a license, you would have to take it up with Ball Brothers?

Q. Why did you have to do that?

A. Because we had sold them our residual rights.

Q. Would you have to take it up with anybody else?

A. No, sir.

Q. What about the two partners?

A. Whose two partners?

Q. You wrote in the letter, I think to Mr. Falck—it is an exhibit—your relationship with Owens and Hazel was that of a partnership. What about taking it up with them?

A. First of all, we had no right to license Kerr, unless we obtained a release from Ball Brothers. If Ball Brothers gave us that release, why, I might have, or might not have, taken it up with Owens and Hazel; because we could have given Kerr, if Ball had permitted, a license. There were no restrictions on either Hazel-Atlas or Owens as to what they should make; and I think I might have taken it up with them.

Q. Why would you?

A. Just to find out about trade conditions, and so on.

Q. You say there was no restriction on them at all? [fol. 2000] A. Not at all.

Q. Was not an arrangement made in March, 1933, that Ball would have all residual rights, except those that Hazel and Owens had, and they would have certain limitations?

A. That is what Ball demanded, but no such contracts were ever signed.

Q. No such written contract?

A. There was no such understanding as far as I knew about.

Q. Did not Mr. McNash say in your presence in the hotel that he would agree?

A. Oh, yes, there were papers drawn with those restrictions included; but Mr. Ball was advised by his attorneys, and we were advised by our attorneys, that no such agreement should be entered into; and no such agreement was entered into.

Q. Mr. Ball was advised by his attorneys, and you were advised by your attorneys: was Owens advised by their attorneys?

A. I assume so; I could not tell you that.

Q. You said Mr. Ball was advised and you were advised that no such——

A. —agreement could be entered into.

Q. Did they tell you why not?

A. Because in their judgment they did not feel it was legal.

Mr Isseks: I call for the production of those opinions. The witness volunteered the statement. I never asked him. He volunteered the statement.

The Witness: I will explain, Mr. Isseks.

[fol. 2001] Mr. Isseks: I never asked him whether he got an opinion.

The Court: He may answer your query for the opinions.

Mr. Isseks: He waived the privilege, if ever a man waived it.

The Witness: When we came to make the final arrangements in New York, Ball Brothers still wanted those restrictions in. I remember very distinctly Mr. Harnbrook saying to Ball Brothers in the room at the Belmont Hotel where we all were: "You cannot sign such an agreement." Mr. W. J. Belknap, who was then our sole counsel, not representing Owens but representing Hartford, told us we must not sign such an agreement.

Q. It is the same Mr. W. J. Belknap who used to represent Owens?

A. That is correct.

Q. Was Mr. C. B. Belknap around, too?

A. I think he was.

Q. Was this opinion confirmed later on in writing?

A. Not that I know of.

Q. I think you said they told you it was illegal?

A. That it might be illegal.

Mr. Isseks: I should like to have his answer that was made before. I think he said it would be illegal.

Mr. Haight: Suppose he did: he has corrected it now.

[fols. 2002-2003] The Witness: I cannot say now just the words that those two gentlemen said at that time.

Q. Did they confirm their oral opinion in writing?

A. No, I think not.

* * * * * * *

[fol. 2004] Q. Mr. Smith, you testified before recess, that Mr. W. J. Belknap and Mr. Hornbrook told you—you first, I think, said it would be illegal or might be illegal,—what is your best recollection of what they said?

A. They would not let anybody sign contracts with those restrictions in.

Q. The restrictions we are talking about is Hazel agreeing to limit its production to 300,000——

A. —and Owens to 200,000.

Q. Mr. Hornbrook represented Ball Brothers?

A. Ball Brothers.

Q. Mr. W. J. Belknap represented whom?

A. Hartford.

Q. Who represented Owens?

[fol. 2005] A. I think Mr. C. B. Belknap.

Q. Who represented Hazel-Atlas?

A. Mr. Philbin.

Q. Did Mr. Philbin give an opinion?

A. He may have. I do not happen to remember.

Q. What is your recollection?

A. I don't think that he did.

Q. Did Mr. C. B. Belknap give an opinion?

A. Not that I remember.

Q. Did anybody give an opinion in writing?

A. No, sir.

Q. You testified they said—once you said, I think, it would be illegal, or might be illegal; and now you said they would not let anybody sign the contract with those provisions in it?

A. They considered such a contract with those restrictions as dangerous from some law. I don't know what the law was.

Q. They did not tell you what law, did they?

A. No, I do not happen to remember.

Q. Was it a bulk sales law?

A. The Clayton Act; it may have been the Sherman Act.

Q. The Sherman Act or the Clayton Act?

A. I think so; but I am not sure about it.

Q. This was some time between the conferences, which the memorandum fixes as, I believe, February, the early part of February, 1933, and the execution of the main contract of March 25, 1933, between your company and Ball Brothers?

A. No; what I am talking about is when we assembled in New York to sign the final contract, right up to that [fol. 2006] time, if my memory serves me correctly—I am simply repeating that it is the best that I can remember—those restrictions were to go into the final contract.

Q. Including the contract with Ball Brothers?

A. No; Ball Brothers were buying the residual rights. Ball Brothers were insisting that the contract between Hartford and Owens, which gave them the right to make as many fruit jars as they desired, and the contract between Hartford and Hazel-Atlas which gave them the right to make as many fruit jars as they desired, be changed so that the limit as to what each could make would be stated in the contract.

Q. This opinion, and decision not to put it in, for the reason you stated, was arrived at before you executed the agreement with Ball Brothers?

A. During the last meeting in New York.

Q. It is the contract in evidence between Ball Brothers and your company, dated March 25, 1933?

A. That is right.

Q. So that it was definite, so far as you remember, that you would not have these restrictions in the written contract as of that date?

A. That is right.

Q. Do you remember that subsequent to that time Kerr was having discussions about getting a license?

A. We were very anxious for Kerr to get a license.

Q. Because it would be more royalties?

A. Yes.

[fols. 2007-2009] Q. And they were making around 100,000 gross a year?

A. I think so.

Q. You testified that naturally you would have to get in touch with Ball Brothers before you could give them a license?

A. Yes, because we had sold our residual rights to Ball Brothers.

Q. I asked you whether you would have to get in touch with Mr. McNash and Mr. Levis. You said no first. Then you said later on you might.

A. We did not have to; I might have done it.

Q. Certainly if there was an agreement by which they had restricted themselves to 300,000 and 100,000 gross annually, you would have to, would you not?

Mr. Wall: Objection to that. That is just an improper conclusion.

The Court: Yes, that would be calling for a conclusion. Sustained.

Q. Do you not remember that you felt you would have to go to Mr. McNash and to Mr. Levis, because there was an understanding that they would restrict themselves?

A. Oh, no.

[fol. 2010] Q. Do you remember that you did go and get Mr. Levis's approval before you continued negotiations with Kerr?

A. I did not have to get his approval.

Q. Did you get his approval?

A. I did not have to get his approval. I took the matter up with him, I think.

Q. My question is: Did you ask him for his approval?

A. That I cannot tell you; because the only approval we had to obtain was from Ball Brothers.

Q. My question again, is, did you ask Mr. Levis for his approval?

Mr. Haight: You have formed three different questions.

The Court: Oh, no, the witness may answer this question if he can.

[fol. 2011] A. I probably took the question up with Mr. Levis, and I may have taken the question up with Mr. McNash; and asked what they thought about it; but I did not have to get their approval if we wanted to go ahead and do it.

Mr. Isseks: I now offer in evidence—and this time again I must make an apology for the TNEC investigators. I have the original document from the files of Hazel-Atlas; the original letter, dated July 21, 1933, from the witness to Mr. McNash. I have the original. I don't know how we got it, but we have it. I should like to have it marked as Government's exhibit.

The Court: What is it, 206?

The Clerk: Government's Exhibit No. 206.

The Court: What is the document?

Mr. Isseks: It is dated July 21, 1933,—it is in Your Honor's book—from the witness to Mr. McNash.

Q. That is your signature, is it not, Mr. Smith?

A. It is. May I read it?

Mr. Isseks: Certainly.

I offer it in evidence.

The Court: It may be admitted over objections.

Mr. Isseks: I should like to have it read.

Thereupon, Government's Exhibit No. 206 was read to the Court by Mr. Kramer, of counsel for the government.

Q. You have the original exhibit in front of you, do you not?

A. Yes, sir.

Q. You say in the letter: "Mr. Levis approves of this step"?

A. I could substitute the word "concurs".

[fol. 2012] Q. But you wrote "approves"?

A. I did.

Q. Did he give you that concurrence or approval in writing?

A. I could not tell you, Mr. Isseks, whether he did or not.

Q. In any event, you communicated with him?

A. I did.

Q. He told you all right?

A. He must have.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 207 the reply from Mr. McNash to the witness. It is dated July 31, 1933.

We will substitute the photostat for the original. Just mark that one. I will take this one out. I will exchange with you—July 31, 1933, from Mr. McNash to the witness.

Q. Is that Mr. McNash's signature?

A. Yes, sir.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Mr. Haight: Is this the reply to Mr. Smith's letter?

Mr. Isseks: Yes.

Mr. Haight: All right.

Thereupon, Government's Exhibit No. 207 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Did you write to any other licensees and ask them whether they approved?

A. No, because no other licensees had rights to make [fols. 2013-2014] domestic fruit jars.

Mr. Isseks: Your Honor, at this time I should like to have marked a photostatic copy of a memorandum dated February 1, 1934, which purports to have been written by Mr. Eldred to Mr. Smith. It is stipulated by Hartford as coming from the files of Hartford. It has six pages. I offer the entire document; but at this time, I would like to have read only the first page relating to Kerr. The other material therein relates to other manufacturers of glassware, and is not now material to the case. This one here has six pages, and the copy that was made for Your Honor has only three. There must be something wrong.

* * * * * * *

[fol. 2015] Q. You heard that page read, did you not, Mr. Smith?

A. I did.

Q. Was one of the things you had in mind in connection with the Kerr matter, was that they would agree to a production which would be limited annually?

A. I think so, I think the requirements called for about 100,000 gross a year.

Q. Was that a restriction that you were considering, one that was discussed with the representative of Ball Brothers?

A. Oh, yes, it had to be.

Q. Discussed with Mr. McNash?

A. Well, I don't know. Yes, I think my letter, rather the note, I took it up with him.

Q. Discussed it with Mr. Levis?

A. Yes.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 209, a photostatic copy of an original document from Mr. F. C. Ball to the witness, dated November 27, 1934.

Q. Is that Mr. F. C. Ball's signature?

A. That is correct.

Mr. Isseks: I would like to offer it in evidence.

The Court: It may be admitted over objection.

(Mr. Kramer reads Exhibit 209.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 210 a photostatic copy of an original letter from Mr. F. C. Ball to the witness. The letter is dated December 7, 1934.

[fol. 2016] Q. Mr. Smith, is that signature on Exhibit 210 that of Mr. Ball?

A. Yes.

Mr. Isseks: Your Honor, I offer it in evidence.

The Court: It may be admitted over objection.

(Exhibit 210 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 211, photostatic copy of a letter dated December 11, 1934, from the witness to Mr. Frank C. Ball, replying to the last two exhibits, 209 and 210. The photostat has been stipulated as a genuine document from the files of the Hartford-Empire.

Q. Mr. Smith, I will ask you whether you wrote that letter?

A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

(Mr. Lewis reads Exhibit 211.)

Q. Mr. Smith, look at Government's Exhibit 211. In the second paragraph you refer to the Kerr situation. Did Kerr ever take a license?

A. Never.

Q. They refused?

A. They did.

Q. And they are operating without a license today?

A. Correct.

Q. You say in the last paragraph on the third page, "our relations with them (Glenshaw Glass Co.) are none too good and a letter from us now when they are in a particular frame of mind might probably produce a situa- [fol. 2017] tion which might jeopardize your position as well as ours". What did you have in mind?

A. I can't tell you. Of course we just obtained an injunction against the Shawkee feeder and they had to discontinue the use of that feeder and go back to the expense of putting the Howard feeder in operation.

Q. What would happen that would stress a situation which would jeopardize Ball Brothers as well as Hartford if you just had a victory?

A. I don't know. I was just trying to think, myself, what could happen,—unless they got very sore again and started to make fruit jars and force us to threaten them.

Q. Were you having settlement negotiations?

A. I can't tell you whether it was just at this time or not. Eventually we settled.

Q. In any event you had something in mind at the time you wrote?

A. I must have.

Mr. Haight: So that His Honor may follow this situation, I suppose you agree that Shawkee applied to the Supreme Court three times for certiorari from the decision, but it was denied?

Mr. Isseks: If you say so. I didn't know that but I won't dispute it. But I don't know what relation this has up to date. Do you know what this witness has in mind about putting them in a jeopardizing situation?

[fol. 2018] Mr. Haight: No.

Mr. Isseks: That is what I am trying to find out. I would like to have marked Government's Exhibit 212, copy of a letter dated January 18, 1935, from the witness to Mr. Ball. The copy we have is a carbon but it is stipulated as genuine by Ball Brothers.

Q. Did you write that letter, Mr. Smith?

A. I don't happen to remember it but I do not deny it.

Mr. Isseks: I offer that in evidence, Your Honor.

The Court: It may be admitted over objection.

(Exhibit 212 read by Mr. Kramer.)

Mr. Smith, who was Mr. Mallinger?

A. He was a fruit-jar broker, I think.

Q. Did you send an investigator, a representative to Pittsburgh?

A. I don't know.

Q. You say, one of our representatives will be in Pittsburgh next week and he will be glad to investigate further. Do you remember whether you did?

A. I haven't any idea whether I did.

Mr. Isseks: At this time I offer in evidence Exhibit 213, a letter dated January 23, 1935, from F. C. Ball to the witness. The copy we have is stipulated as a copy from the Ball Brothers.

Q. I will ask whether—just a minute—I would like to substitute a photostatic copy of the original, with the aid of Mr. Wall, and it will save us a lot of time.
[fol. 2019] Q. I show you Government Exhibit 213, Mr. Smith, and ask you whether that is the signature of Mr. F. C. Ball?
A. It is.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted over objection.

(Mr. McCracken reads Exhibit 213.)

Q. Mr. Smith, I show you Government's Exhibit 213, and directing your attention to the third full paragraph in which Mr. Ball says: "We are not very much interested about the quantities of jars of this kind that might be sold but the fact that they are offered at cut prices tends seriously to disturb the market conditions". Did you have any interest in the prices at which jars were sold?
A. Not a bit.
Q. Not at all?
A. No. I didn't have anything to do with the sales price of wares made on our machines.
Q. Did not fix them?
A. I did not have anything to do with them.
Q. Why was Mr. Ball writing you that he was worried by the fact they were offering cut prices which was seriously threatening the market?
A. That was Mr. Ball's worry, not mine.
Q. You would not be worried about prices?
A. No.
Q. Never have been?
A. No, except we would like our licensees to make money.
[fol. 2020] Q. I see.
A. So they could pay our royalties.
Q. But you were not interested in maintaining prices, were you?
A. No, sir.

Q. You would not suggest that prices be maintained, would you?

A. I never had anything to do with the prices.

Mr. Isseks: Your Honor, I offer photostatic copy of letter dated January 25, 1935, two days later after he gets this letter, to Mr. Levis. It is stipulated it is genuine by Hartford, and it is marked Exhibit 214.

Q. I will ask you whether you wrote that letter, Mr. Smith?

A. I did.

Mr. Isseks: I will offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

(Exhibit 214 is read by Mr. Lewis.)

Q. Now look at Government's Exhibit 214, the last paragraph. You were talking about prices of fruit jars, weren't you?

A. Yes.

Q. And you said there might be something to Mallinger's suggestion if prices are maintained, did you not?

A. That is what I said.

Q. Of course you were talking about prices of fruit jars manufactured by various manufacturers of glassware in the United States?

A. Say that again.

[fol. 2021] Mr. Isseks: Read that question.

(Question read.)

A. Yes.

Q. And at that time as far as you knew there were only three manufacturers of fruit jars, four including Kerr?

A. Yes.

Q. Owens, Hazel-Atlas, Ball Brothers and Kerr.

A. That is correct.

Q. You were interested, were you not, in maintaining prices of fruit jars?

A. No. I was interested in having people make money so they could pay our royalties.

Q. You wrote this letter, Mr. Smith, Government's Exhibit 214, "I am just passing this to you for what it may be worth doubting if you want to consider it. On the other hand there may be something to it if prices are maintained." You wrote that, didn't you?

Mr. Haight: He said he did. Ask him what he means by that.

Mr. Isseks: I will accept it. I will take the Judge's question.

A. What was that?

Mr. Wall: The question was what did you mean by it?

A. I will look at it again. Well, I would say that if Mallinger were hunting all over the country to buy fruit jars and if as Mr. Ball says—didn't Mr. Ball's letter say he was [fol. 2022] selling below the market?

Q. Oh, yes, sure.

A. That if Owens or Hazel or Ball could sell Mallinger fruit jars it might be a good thing.

Q. You dropped your voice.

A. If any of our three licensees would furnish Mallinger fruit jars, it might be a good thing.

[fol. 2023] Q. Because it would maintain prices?

A. The maintaining of prices is up to them. We did not know what fruit jars sold for.

Q. You said on the other hand there may be something to it if prices were maintained and Judge Haight wanted you to explain what you meant?

Mr. Haight: No, I object to the question you put to him.

Mr. Isseks: I will withdraw the question. I think I have exhausted the subject matter, Your Honor.

Q. Of course, you heard from Mr. Levis after you wrote him, did you not?

A. I probably did.

Mr. Isseks: I offer at this time Government's Exhibit 215, a letter signed "Bill" on the stationery of Owens-Illinois Glass Company, office of the president, dated January 28, 1935, addressed to the witness, and I ask you whether that letter was received by you from Mr. Levis?

A. I did receive it.

Q. Is that Mr. Levis' signature?

A. I think so.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

(Exhibit 215 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to offer Government's Exhibit 216, a letter dated February 5, 1935, on the stationery of Owens-Illinois Glass Company, office [fol. 2024] of the president, addressed to the witness and signed "Bill". In the left hand corner, William Levis.

Q. I will ask you whether you received that letter from Mr. Levis in the regular course of business?
A. I do not deny it, Mr. Isseks.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

(Mr. McCracken reads Exhibit 216.)

Q. Who is Mr. McClure, Mr. Smith?
A. Officer of the Hazel-Atlas Glass Company.

Mr. Isseks: Your Honor, at this time I would like to have marked Government's Exhibit 217, photostatic copy of a letter dated February 7, 1935, from the witness to Mr. Levis.

Q. I will ask you, Mr. Smith, whether you wrote that letter to Mr. Levis?
A. I have no reason to doubt it.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It will be received, over objection.

(Government's Exhibit 217 read by Mr. Lewis.)

Mr. Isseks: At this time, Your Honor, I offer as Government's Exhibit 218 copy of a letter dated August 1, 1935, from G. A. Ball to the witness. It is stipulated as genuine by the Ball Brothers.

Q. I will ask you, Mr. Smith, whether you received that letter in the regular course of business?
A. I have no reason to deny it, Mr. Isseks.

[fol. 2025] Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It will be admitted, over objection.

(Exhibit 218 read by Mr. McCracken.)

Q. Reed was one of the outsiders, was he not?
A. That is correct.
Q. And still is an outsider?
A. Yes.
Q. And still is manufacturing glassware so far as you know?
A. Correct.
Q. Do you know whether he is still manufacturing fruit jars?
A. I have no idea.

Mr. Isseks: At this point I would like to offer as Government's Exhibit 219——

The Court: You may suspend at that point.

The bailiff will recess court until ten o'clock tomorrow morning.

(Night adjournment.)

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[fols. 2026-2028] March 14, 1941, 10:00 A. M.,

Mr. Fuller: If the Court please, a clarifying correction in the record. Page 702, the witness testifying, the question is: "Who owned General Glass at that time?" That was in 1932. The witness said, "The Hocking Glass Company." I am sure counsel for the government will stipulate that at that time 50 per cent of the stock of the General Glass Company only was owned by the Hocking Glass Company, the balance by Thatcher, and that Hocking Glass Company acquired Thatcher's interest some time in 1935.

Mr. Isseks: That is right, Your Honor.

Mr. Fuller: One more thing, if Your Honor please. I have been under the impression these various documents being admitted here from time to time were being admitted under the limitation that they could be used only to go to the question of intent, motive or state of mind insofar as they set forth or are based upon what someone told the writer. I would like to inquire if that is correct.

Mr. Isseks: Your Honor, that is not my understanding.

Mr. Fuller: Then in that case, if Your Honor please, I have been under a misapprehension and I should like to request that Exhibit 178, which went in yesterday, be so limited.

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[fols. 2029-2031] The Court: I will sustain the objection to the paragraph beginning, "I told them" and ending with the word "profitable"; and overrule it with reference to the next paragraph.

Mr. Isseks: The paragraph as to which Your Honor is sustaining the motion, is understood to limit the proof only.

The Court: That is right.

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[fol. 2032] Mr. Isseks: I have had marked, just before we started, three documents. I will describe them and then hand them to the witness. I have had marked as Government Exhibit 219, a letter dated August 5, 1935, from the witness to George A. Ball, certified as original by Ball [fol. 2033] Brothers; as Government Exhibit 220 a letter dated May 6, 1935, from F. C. Ball to the witness; and Government Exhibit 221, a letter dated May 8, 1935, from the witness to Mr. F. C. Ball.

Q. I hand you these three documents and ask you whether you wrote Exhibit 219 and 221, and received from F. C. Ball 220?

A. I have no reason to doubt it.

Q. You wrote the ones that purport to bear your signature and received the other one?

A. I have no doubt.

Mr. Isseks: I offer them in evidence.

The Court: They may be admitted over objection.

Mr. Isseks: I would like to have them read to you.

(Government Exhibits 219, 220 and 221 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government Exhibit 222, a letter dated September 30, 1932, from Mr. McNash to Mr. Smith, and as 223, reply letter dated October 3, 1932, signed "F. Goodwin" and addressed to Mr. McNash. I ask the witness whether he received 222 from McNash and replied by Government Exhibit 223?

A. (After examining same.) I don't doubt them; I don't remember them but I don't deny it.

Mr. Isseks: They will be offered in evidence.
The Court: They will be admitted over objection.

[fol. 2034] Q. Before I have these read, do you remember there was reference in the Exhibits 219, 220 and 221 to the Reed suit?
A. Correct.
Q. That suit is still in progress?
A. It is.
Q. It has never gone to trial?
A. No. A date was set and this suit of the Government's came on and it was postponed.
Q. Do you remember when that suit was brought?
A. No, I don't.
Q. It was brought prior to this correspondence in 1933, was it not?
A. I think it must have been.

Mr. Isseks: I would like to have Government Exhibits 222 and 223 read.

(Said exhibits read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government Exhibit 224, a letter dated April 26, 1933, from Mr. McNash to Mr. Smith. It has been stipulated as a copy of a genuine document by Hazel-Atlas Corporation.

Q. Did you receive that letter, Mr. Smith, in the regular course of business?
A. (After reading same.) The same answer; I don't remember but I don't deny it.

Mr. Isseks: It is offered in evidence.
The Court: It may be admitted over objection.

[fols. 2035-2036] Q. Mr. Smith, do you remember whether you replied to that letter?
A. No, but I probably did.

Mr. Isseks: I would like to have it read, Your Honor.

(Government Exhibit 224 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government Exhibit 225, a memorandum dated July 20, 1937, from A. T. Safford, Jr., to Mr. Smith.

It is stipulated as a copy of a genuine document from the files of Hartford.

Q. Mr. Smith, did you receive that memorandum from Mr. Safford in the regular course of business?
A. I don't remember but I do not deny I did.

Mr. Isseks: We offer it in evidence.

* * * * * * *

[fol. 2037] Mr. Isseks: Your Honor has admitted evidence of inter-office communications under well-accepted rules, showing the state of mind and purpose of the Hartford-Empire Company, and any other conspirator who at that time has been shown by the evidence to have become a party to the conspiracy. We are not offering it, to get it very clear, since objection was made, for the truth of what Mr. Safford said or Mr. Levis said, or for that matter anyone else to whom he refers. All Mr. Safford says is what Mr. Levis said. We expect to call Mr. Safford and Mr. Levis, but we press the offer for that limited purpose right now.

The Court: It may be admitted, for that purpose, over objection.

(Government Exhibit 225 read by Mr. Lewis.)

Q. Mr. Smith, do you have any recollection about this information you got from Mr. Safford in 1937?
[fol. 2038] A. No.
Q. You said you didn't deny it.
A. No, I don't deny it.
Q. Long after the opinions you said yesterday you got from various people with regard to the legality of any restrictions as to Hazel and Owens.

Mr. Wall: What has that got to do with restrictions? I object to that as entirely out of order.

(Previous questions and answers read.)

Mr. Wall: This is merely a memorandum in 1937. There is no question as to the time involved at all. It has been identified and admitted.

Mr. Isseks: I withdraw the question, physically.

At this time I would like to have marked as Government Exhibit 226, memorandum dated December 23, 1935, which purports to be signed by R. D. B.—I understand that is Col. Brown. It is entitled: "Memorandum of Conference in New York, December 11, 1935, between Messrs. Smith, McNash and Brown, in relation to Hazel-Atlas Corp."

Q. Mr. Smith, I hand you this memorandum, which has been stipulated, I understand, by Hartford, as coming from its files, and ask you whether you remember the conference referred to therein?

A. (After witness reads same.) No, I don't, but I don't deny it, Mr. Isseks.

Q. Does the matter set forth therein state what transpired at the conference at which you were present with Mr. [fol. 2039] McNash and Col. Brown?

A. Well, I just couldn't tell you, Mr. Isseks; I don't remember the conference.

Q. Do you remember there were discussions in the latter part of '35 between your company and the Hazel-Atlas Corp. with regard to revision of the contract?

A. Well, I know there were at various times discussions with regard to revisions of contracts.

Q. Do you remember attending a conference in New York with Col. Brown and Mr. McNash?

A. I don't remember this particular conference but I don't deny it.

Q. Does the matter set forth in that memorandum generally set forth what transpired in New York at a conference between you and Mr. McNash and Col. Brown?

A. Well, not remembering it, I cannot say I do. I don't doubt these things were discussed.

The Court: What was the latter part of the answer?

The Witness: I do not doubt that these things may have been discussed.

Mr. Philbin: May I call attention at this time that this memorandum is dated December 23, 1935, and purports to be a memorandum of a conference which was held on December 11, 1935? We do not object to the admission of the memorandum, but I do think that the time when it purports to have been made does go somewhat to its weight.

Mr. Isseks: I agree, Your Honor.

[fol. 2040] The Court: Very well. It will be admitted over objection.

Mr. Isseks: I will have it read.

(Said Government Exhibit 226 read by Mr. Kramer.)

[fol. 2041] Q. Mr. Smith, just for continuity, but not to go into it in too great detail, do you remember that some time in 1933 your company entered into an agreement with the Lynch Corporation?

A. That is correct.

Q. The Lynch Corporation, you have already testified, was a manufacturer of certain types of forming machines?

A. A type.

Q. About the same time that you went into your contract with the Lynch Corporation, the Lynch Corporation acquired the assets, did it not, of another corporation, a manufacturer of forming machines?

A. The Miller Machine and Mold Works.

Q. Do you remember that in connection with your contract with Lynch Corporation, there was some kind of an arrangement relating to licensing from Hartford?

A. Yes; but I don't know just the details.

Q. That is all right. That is all I want; unless you want to make a statement? You are perfectly free to make any statement you want.

A. No, sir.

[fol. 2042] Q. Do you remember some time thereafter, about two years later, Ball Brothers was interested in purchasing forming machines from the Lynch Corporation, and the matter was brought to your attention?

A. Yes, sir.

Q. The Lynch Corporation, even after it made the agreement with you of 1933, sold rather than licensed its machines?

A. They sold their machines outright.

Q. Except insofar as they had any contractual arrangement with you regarding a license from you, is that right?

A. That is correct.

Q. Do you remember that you had various conversations with Messrs. Ball and the Lynch Corporation regarding Ball Brothers' efforts to buy machinery from the Lynch Corporation, in 1935?

A. Not as far as I was concerned do I remember.

Q. See if I can refresh your recollection.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 227 a letter from the witness to Mr. George A. Ball, dated December 6, 1935. This has been stipulated as genuine by Ball Brothers.

Q. Mr. Smith, I ask you whether you wrote that letter?
A. Yes, Mr. Isseks, I did.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 227 was read to the Court by Mr. McCracken, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 228 a letter [fol. 2043] dated January 14, 1936, from T. C. Werbe, president of the Lynch Corporation, to the witness. I understand that it has been stipulated as genuine, both by the Lynch Corporation and by the Hartford-Empire Company. The copy we have is a copy of an original, and it is in Your Honor's book; but I understand there is a stipulation as to genuineness by both the recipient and the sender.
Mr. Wall: We have stipulated it.
Mr. Isseks: Thank you.

Q. I ask you, Mr. Smith, whether you received that letter in the regular course of business? Did you receive that letter, sir?
A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted (over objection.)

Thereupon, Government's Exhibit No. 228 was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 229 a letter dated January 22, 1936, from the witness to Frank C. Ball.

Q. I ask you, Mr. Smith, whether you wrote that letter to Mr. Ball?
A. I did, Mr. Isseks.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.
Mr. Isseks: I should like to have it read.

Thereupon, Government's Exhibit No. 229 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 2044] Mr. Isseks: At this time, Your Honor, I should like to have marked as Government's Exhibit No. 230 a photostatic copy of an original letter dated January 24, 1936, from F. C. Ball to the witness.

Q. Mr. Smith, is that Mr. Ball's signature on the letter?
A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 230 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Mr. Smith, at any time has the Ball Brothers purchased, or rather licensed any of your feeders?
A. Any Hartford feeders?
Q. Yes.
A. No, they have been using feeders of their own make.
Q. As to which they have title?
A. Yes, sir.
Q. Do you know if at any time subsequent to the correspondence which has been marked Government's Exhibits Nos. 229 and 230, Ball Brothers purchased any forming machines from Lynch?
A. I think they did.
Q. Did they sign any license agreements with you gentlemen with regard to these formers?
A. Not the regular form. I have forgotten just what the arrangement made was. It was handled by our attorney.
Q. You are sure it was not the regular form?
A. That is my best recollection.
Q. Did you have any correspondence or conferences in [fol. 2045] connection with it?
A. I don't remember any conferences.
Q. You do not remember talking about it to anybody?
A. No. I think the patent department—I may be wrong but that is my memory—that subject was handled by the patent department.
Q. Who in the patent department, do you remember?
A. I think Colonel Brown, but I am not dead sure.

Mr. Haight: Before you pass that, will you bring out from the witness that the Miller machines referred to there are formers and not feeders?

Mr. Isseks: I shall be glad to.

Q. In the letter he writes you, he is referring to forming machines?

A. Forming machines.

Mr. McCallister: If Your Honor please, may I make the suggestion that that probably was a mistake; he was probably referring to the Lynch machines, in the first paragraph, instead of the Miller machines.

Mr. Isseks: We will have to wait until we get Mr. Frank Ball here. As I understand the facts, there was the Ed. Miller Company, at Columbus, Ohio; there was the Lynch Corporation somewhere in Indiana.

A. Anderson.

Mr. Isseks: Anderson, Indiana. The Lynch Corporation acquired the assets of Miller in August of 1933. We will come to that. My understanding is that Mr. Ball meant what he said when he said Miller machines.

[fol. 2046] Mr. Fess: The reference to the press and blow machines is to the Miller machines which were then being manufactured and sold by the Lynch Corporation.

Mr. Isseks: That is right. I take that statement as an accurate statement from Mr. Fess.

Q. I am going into another subject, namely, milk bottles—

(Morning recess.)

The Court: Proceed.

Q. Mr. Smith, the defendant Thatcher Manufacturing Company is a licensee of Hartford, is it not?

A. That is correct.

Q. It is one of the oldest licensees, is it not?

A. That is correct.

Q. One of your first?

A. Yes, sir.

Q. Originally your company gave Thatcher an exclusive right, did it not, to use your machines for the manufacture of milk bottles?

A. We originally had four licensees on milk bottles. Those four companies sold their assets to the Thatcher Company; the Thatcher Company taking over their license and lease agreements. The Thatcher Company had an exclusive right for the manufacture of milk bottles on our paddle feeders; and that exclusive right also covered the exclusive use of our milk bottle press and blow machines.

Q. That was the first feeder you developed, the paddle feeder?

A. That is correct.

[fol. 2047] Q. What was the next feeder that you developed?

A. The next different type of feeder?

Q. Yes.

A. Was the Hartford single feeder.

Q. Did Thatcher have exclusive rights in connection with the Hartford single feeder?

A. No, sir.

Q. Did they ask for exclusive rights?

A. I don't know whether they asked for them—put it this way: they felt that because they had exclusive rights on the original feeder, those rights ought to extend over into the rights on the Hartford single feeder.

Q. What did your company say about it?

A. We took the position that the original contracts did not carry over, that they could not technically demand an exclusive right on the Hartford single feeder.

Q. So you did not give it to them on the Hartford single feeder?

Mr. Emery: Just a moment. I think he is asking for a conclusion as to what he did. I have not objected heretofore.

Mr. Isseks: I will withdraw the question.

Q. When they asked you for it, you said you gave your position, did you not?

A. Yes, sir.

Q. What was the final outcome, if you remember?

Mr. Emery: I think that is a conclusion too. I think if it is evidenced by correspondence, a contract, or something [fol. 2048] like that, we might as well approach it in that way.

The Court: I think if the witness knows he may answer.

Q. What is your best judgment as to what the final arrangment was on the Hartford single feeder between your company and Thatcher?

A. They licensed and used the Hartford single feeder.

Q. But not exclusively?

A. We never signed a contract——

Mr. Emery: Again, Your Honor, I think that may involve the construction of a contract. How important it may be——

Mr. Isseks: This is not a suit on the contract, Your Honor.

Mr. Emery: No, no, I understand that; but some of these subsequent acts may have some relation to the question whether there was or was not such a right as counsel is now asking the witness about.

The Court: If there is such a contract in existence, it may be shown to the witness so that he may refresh his memory.

Mr. Isseks: I intend to. All I ask him now is for his present recollection on the Hartford single feeder.

The Court: Well, he may give that.

The Witness: We never were willing to admit that Thatcher and Company had exclusive rights to make milk [fol. 2049] bottles on the Hartford single feeder.

Q. We have discussed two feeders: the paddle feeder and the Hartford single feeder. Did you also have a paddle needle feeder?

A. We put on to the paddle feeder, the additional apparatus which had the needle.

Q. Did that become the Hartford single feeder?

A. No, sir.

Q. That is a different one? There are three different kinds?

A. Hartford single feeder is an entirely different machine.

Q. Did Thatcher ask for exclusive rights in connection with the paddle needle feeder, as distinguished from the paddle feeder?

A. That, I don't remember.

Q. Did you have any other feeders besides the paddle feeder, Hartford single feeder, and paddle needle feeder?

A. No, Mr. Isseks.

Q. As of the date of the complaint, December, 1939, how many of your licensees were permitted—I mean in number only—to manufacture—use the machines and manufacture on them milk bottles without restriction?

A. Without restrictions?

Q. Without restriction as to quantity.

A. There were the Thatcher Company, and the Owens Company, and the Liberty Glass Company.

Q. That is all?

A. I think so. That is my memory.

Q. There were some others, were there not, who could [fol. 2050] use machines for making milk bottles; but they were limited in quantity or in area.

A. I don't think area; I think they were limited in quantity, but not area.

Q. Were J. T. & A. Hamilton limited to the county which included Pittsburgh?

A. Not by Hartford.

Q. Not by Hartford?

A. No; because J. T. & A. Hamilton were one of the original licensees. Their license and lease from us was purchased by the Thatcher Company. The Thatcher Manufacturing Company had some kind of agreement with the Hamilton Company which permitted the Hamilton Company to continue to use that equipment.

Q. You said before that Owens was a licensee as of the time of the filing of the complaint that could make milk bottles unrestricted?

A. That is right.

Q. Owens, as it is constituted at present, and as of December, 1939, consisted of various companies that it acquired; is that not so?

A. That is correct.

Q. One of those companies was the Berney-Bond Company?

A. That is correct.

Q. That company had the right to make milk bottles on your equipment?

A. That is correct.

Q. Later on the Berney-Bond Company was taken on in [fols. 2051-2052] some form by the present owners, Owens-Illinois?

A. That is correct.

Mr. Isseks: Your Honor, at this time I should like to have marked a photostatic copy of an agreement dated December 8th, 1920, between the Hartford-Fairmont Company and the Thatcher Manufacturing Company. There is a number of pages. It is Government's Exhibit No. 231. Your Honor, this document purports to be signed by the witness as vice-president of Hartford-Fairmont, and F. E. Baldwin, as president of Thatcher Manufacturing Company. It has been stipulated as a genuine document by Hartford.

Q. I shall show the witness a photostatic page of signatures and ask him whether he identifies his signature?

A. I do.

Q. And that of Mr. Baldwin too?

A. I think so.

Mr. Isseks: Your Honor, I offer the agreement in evidence.

The Court: What is the date of it?

Mr. Isseks: December 8th, 1920.

Mr. Emery: If Your Honor please, I should like to have our objection noted, at least until I have an opportunity to verify it.

Mr. Isseks: I will show it to you now.

Mr. Emery: You need not stop to do it now.

The Court: It may be admitted, over objection.

* * * * * * *

[fol. 2053] Q. Mr. Smith, did you ever give a license to anybody else to manufacture milk bottles on Hartford paddle feeders?

A. Not that I remember.

Q. Of course Hartford has never been in the manufacture of glassware?

A. No, sir.

Q. Any kind of glassware?

A. No, sir.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 232, a photostatic copy of an original letter dated October 31, 1924, from George E. Howard to the witness.

Q. I ask the witness whether the signature on this letter is that of George E. Howard?

A. It is.

Mr. Isseks: Your Honor, this document has been stipulated as genuine by Hartford-Empire Company. It is offered in evidence to show the state of mind of the Hartford-Empire Company, and not for the truth of the statements made therein by Mr. Howard, who has been identified already as an employ- of the Hartford-Empire Company from the period, I believe, commencing some time in 1922.

Mr. Wall: If Your Honor please, the state of mind of Mr. Howard and of Hartford may or may not coincide from time to time. I would concede this would be proper as showing facts or information furnished to Mr. Smith [fol. 2054] by Mr. Howard.

Mr. Isseks: That is all I want it for.

Mr. Emery: I wish to note a separate objection on behalf of the defendant Thatcher Manufacturing Company.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 232 was read to the Court by Mr. McCracken, of counsel for the government.

Mr. Emery: If the Court please, I understand that this is not received as any proof of the recitals contained in it.

The Court: Counsel so stated at the time he offered it.

Q. Mr. Smith, do you remember having various conferences with the representatives of the Thatcher Manufacturing Company in connection with their efforts to obtain from you an exclusive right on the Hartford single feeder?

A. There were such conferences.

Q. Do you remember that you and Mr. Knox Smith went to Elmira and attended a meeting of the Board of Directors of Thatcher Manufacturing Company?

A. Yes, sir.

Q. Do you remember what happened?

A. No, sir.

Q. You do remember going?

A. Yes, sir.

Q. Do you remember the purpose of the visit?

A. No; a general discussion of the business, and our [fol. 2055] relationship; but just what occurred, I don't know.

Mr. Isseks: Your Honor, at this time I should like to show the witness a diary entry of March 13th, 1925. I have had copies made of it. I will show you copies. I should like to substitute them for the diary entry, which runs over two pages. We have had an actual transcript made. I should like to show it to Your Honor. It is to try to refresh the witness's recollection, solely.

Q. Read that diary entry, Mr. Smith, of March 13, 1925, and see if that refreshes your recollections.

Mr. Emery: If the Court please, I do not recall what the record shows as to the objections made to the use of the diary. I should like to have an objection to the use of the diary.

Mr. Isseks: I should like to know the nature of the objection. I am trying to refresh his recollection.

Mr. Emery: I object to the use of the diary.

The Court: There were some objections made originally. The Court at that time authorized counsel to present certain excerpts from the diary, or the diary, to the witness, to refresh his memory; and for that purpose only.

Mr. Isseks: I am not offering the diary, Your Honor, at this time. I may, some other time.

Q. Have you read the diary entry?

A. I have.

Q. Does that refresh your recollection, sir?

[fol. 2056] A. It does, to the extent that one question was discussed at that meeting.

Q. What is that, sir?

A. Namely, the question of Thatcher's rights to the Hartford single feeder.

Q. What position did they take; do you remember?

A. No, sir.

Q. Do you not remember they said they were entitled to have exclusive rights?

A. I think they said they were entitled to it. I don't know whether they actually legally claimed it or not.

Q. Do you remember a settlement reached at that meeting of the Board of Directors of Thatcher and yourself, a suggested settlement?

A. I know that there was some kind of a settlement talked about, but I don't think a settlement was ever reached.

Q. Do you remember that the arrangement was that you could license anybody else on the Hartford single feeder, but you would have to give a rebate of the royalty to Thatcher?

A. That may have been suggested; but it never occurred.

Q. You never agreed to give that rebate?

A. Not on other people's licenses.

Q. I misunderstood you. You remember they made that suggestion, though?

A. There were various suggestions made by the Thatcher people as to why they should be compensated if we went ahead and licensed the Hartford single feeder to others for milk bottles.

[fol. 2057] Q. Look at that diary entry, please. The last line you will note refers to an agreement of some kind. It says it is set forth in a memorandum. Have you seen the memorandum?

A. No, sir.

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[fol. 2058] Q. I will show you Government's Exhibit 233, and ask you if you saw that document simultaneously at the time of the meeting?

A. I am not clear whether this was written after the meeting or before.

Q. Nobody knows, apparently, unless you do. Mr. Wall says he doesn't know what the date is. I don't know. The date has been obliterated unintentionally apparently. Have you read it, sir?

A. I have.

Q. Did you receive that from Mr. Knox Smith in the regular course of business?

A. I don't remember it, Mr. Isseks.

Q. Do you have any recollection whatsoever?

A. No.

Q. The intials on the left hand corner of the document, those are of Mr. Smith, are they not?

A. Yes, H. K. S.

Mr. Haight: They are typewritten.

Mr. Isseks: Yes. I offer it in evidence, Your Honor, but it is like the document of which Your Honor has deferred decision. I offer it, and I assume the Court will defer decision.

[fol. 2059] The Court: Yes. It may be done.

Mr. Emery: I suppose we may have the usual objection?

The Court: Yes.

Q. Mr. Smith, you in connection with the work in your organization have your initials put on a document, do you not, in the regular course of business?

A. I think the stenographer usually does. I think they are more apt to do it on the letters than on the memorandum.

Q. It is the regular practice in your company to put the initials on the document in order to identify who wrote the document?

A. Yes. I think the stenographers do.

Q. As far as you know the initials H. K. S. on there are——?

A. Herbert Knox Smith.

Mr. Isseks: Thank you. At this time I would like to have marked as Government's Exhibit 234 original of a supplemental agreement, single feeders, production rebate, future development, Thatcher Manufacturing Company, dated December 1, 1925. It has been furnished us by Hartford. It is purported to be signed by the witness as an executive of both the Hartford-Empire Company and the Fairmont Company, and F. E. Baldwin on behalf of the Thatcher Manufacturing Company.

* * * * * * *

[fol. 2060] Q. Is that your signature, Mr. Smith, under Hartford-Empire Company?

A. Yes.

Q. Is that your signature under Hartford-Fairmont Company?

A. It is.

Q. Is that the signature of Mr. F. E. Baldwin under Thatcher Manufacturing Company?

A. It is.

Q. Is that the signature of Herbert Knox Smith?

A. It is.

Q. Who is the gentleman referred to as J. L. Atherton?

A. I think that was my stenographer.

Q. And Frank L. Collins?

A. I can't say.

[fol. 2061] Q. J. H. Mills, an employe?

A. I think so.

* * * * * * *

[fol. 2062] Q. I will show you a letter which I will have marked first, it is dated December 29th, 1925. It is a photostat of an original letter from F. E. Baldwin to Herbert Knox Smith, general counsel Hartford-Empire Company, Exhibit 235. Now, Mr. Smith, I will show you Government's Exhibit 235, and ask you whether you identify the signature thereon as the signature of Mr. Baldwin?

A. I think it is.

Q. Mr. Baldwin was who in 1925?

A. I think he was president of the Thatcher Manufacturing Company.

* * * * * * *

[fol. 2063] Q. Mr. Smith, I show you diary entry for April 13, 1926, and see if that refreshes your recollection of subsequent conference you had with Mr. Baldwin and Mr. Mandeville; who is Mr. Mandeville?

A. Mr. Mandeville was attorney for Thatcher Manufacturing Company.

Q. You mean the older Mr. Mandeville?

A. Yes.

Q. He subsequently became chairman of the Board of Directors, did he not?

A. Yes. I think he did.

Q. Do you remember a conference in the early part of [fol. 2064] 1926 between yourself, Mr. Knox Smith and Mr. Baldwin and Mr. Mandeville, regarding the Thatcher situation?

A. No. I do not happen to remember it but I do not deny it.

Q. There is a reference in this diary to a memo of April 13th, 1926. Counsel have located it and are having it photostated. When we get it we want to show it to the witness. Am I right?

Mr. Goodrich: April 13th?
Mr. Isseks: Yes.
Mr. Goodrich: No, we haven't found it yet.
Mr. Isseks: Oh, excuse me. I thought you had it. When you do find it we would like to have it.

Q. Now, do you remember having a subsequent conference at which you were present in addition to Mr. Mandeville, a gentleman by the name of Collins; I direct your attention in that connection to diary entry of May 14, 1926. See if that refreshes your recollection. I will show you the diary entry for May 14, 1926, and see if you remember having a conference with Mr. Mandeville and Mr. Collins on the question of rebate to the Thatcher Manufacturing Company?

Mr. Fuller: Are you referring to I. J. Collins?
Mr. Isseks: I don't know.

A. I don't know.
Q. Are you answering Mr. Filler's question?
A. No, I don't remember that but I do not deny the conference.
Q. There was a Mr. Collins at that time connected with the Thatcher Manufacturing Company. You testified to that [fol. 2065] I believe?
A. Yes. I think he was assistant-treasurer or he may not have had any office.
Mr. Isseks: Your Honor, we have also asked counsel to produce a memorandum of May 14th, 1926, relating to this subject matter in view of the diary entry, File L-1-18.
Q. You don't remember whether it was Mr. George Collins of the Liberty Glass Company, do you?
A. I haven't any idea.

Mr. Isseks: I would like to offer a letter dated June 2nd, 1926, purporting to have been signed by Herbert Knox Smith to H. C. Mandeville, and it is stipulated as copy of genuine document by Thatcher Manufacturing Company on page 3 of the stipulation. It is marked Exhibit 236. You don't happen to have the original, Judge Emery?

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[fol. 2066] The Court: I will admit it over objection.

(Mr. McCracken reads Exhibit 236.)

The Court: At this point the bailiff may recess court until two o'clock.

(Noon recess.)

[fol. 2067] (At 2 o'clock p. m., Friday, March 14, 1941, hearing resumed.)

Mr. Isseks: Your Honor, at this time I would like to mark as Government Exhibit 237, the original of an agreement executed October 18, 1926, between Hartford-Fairmont Company, Hartford-Empire Company, and Thatcher Manufacturing Company. It purports to be signed by the witness in two capacities, and by Mr. Baldwin as president of Thatcher Manufacturing Company.

Q. I show you the signatures. Do you identify your signatures?
A. I do.
Q. And the signature of Mr. Baldwin?
A. I think it is.

Mr. Isseks: Briefly, Your Honor, this contract cancelled the supplemental agreement of December 1, 1925, which I marked this morning, but embodies substantially the same provisions except that the rebate of royalties was set at 7 cents per gross on the excess over 500,000 gross, up to 1,000,000 gross, but no rebate beyond a million gross.
Mr. Haight: May my objection appear in the record?
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have admitted as the next exhibit, Government Exhibit 238, a longhand memorandum dated 12/12/27, entitled "Thatcher Manufacturing Co."

Q. Mr. Smith, I ask you first whether you identify handwriting on the photostat?
A. Mr. Herbert Knox Smith's.
Q. Will you please look at it and see if it refreshes your [fol. 2068] recollection that you attended a conference with Mr. Mandeville and Mr. Knox Smith on or about the date mentioned?
A. No, but I do not deny it, Mr. Isseks.
Q. And what Mr. Knox Smith sets forth as having been said by you is substantially what you said at the conference?
A. I do not remember saying it but I do not deny it.

Mr. Emery: I object to the receipt of this exhibit.

The Court: What was it you said?

The Witness: I do not remember saying it but I do not deny it.

Mr. Emery: I don't think that makes it admissible.

Q. Let me ask you, do you remember talking to Mr. Mandeville?

A. I talked to Mr. Mandeville a great many times, Mr. Isseks.

Q. I understand. Do you remember talking to Mr. Mandeville on or about the date mentioned in the memorandum, December 12, 1927?

A. No.

Q. Do you remember talking to Mr. Mandeville in connection with the subject-matter of giving milk licenses for unlimited feeders?

A. I don't remember it, but I don't say I did not talk to Mr. Mandeville.

Q. Do you remember telling Mr. Mandeville you would not give anyone a license for unlimited feeders before first consulting with Mr. Mandeville?

A. No, I don't remember saying it, but I might have said it.

Q. What is your best recollection?

[fol. 2069] A. I have no recollection of having said it but I do not deny I did say it.

Q. Did you ever tell Mr. Mandeville it was not your intention to enlarge the number of feeders now held by infringers by way of exchange for Hartford single feeders or by way of Miller feeders?

A. I don't remember, but I don't say that I didn't.

Mr. Isseks: I offer that in evidence.

Mr. Emery: I object. There is no signature or initials on the copy that I have.

Mr. Isseks: There is not on the original. The witness says there is handwriting.

The Court: Let me see where the handwriting is.

Mr. Isseks: All over the entire copy, the entire document.

The Court: I see. It is in longhand.

Mr. Isseks: The witness says that is the handwriting of Herbert Knox Smith.

The Court: It may be admitted over objection.

Mr. Isseks: The document, Government Exhibit 238, says: "Thatcher Manufacturing Co. 12/12/27. Mr. Mandeville—FGS—HKS—Htfd.

"(1) FGS told HCM he would not give anyone a milk license for unlimited feeders before seeing HCM.

"(2) FGS said it is not our intention to enlarge the number of feeders now held by infringers, by way of exchange for HSF or by way of Millers. It is not out intention to increase tonnage."

[fol. 2070] Q. That HCM refers to Mr. Mandeville, does it not?

A. I would assume so, Mr. Isseks.

Q. Those are his initials?

A. Yes.

Q. And the HSF refers to the Hartford?

A. Hartford Single Feeder.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 239, photostatic copy of a carbon of a letter dated March 13, 1928, from HKS, at least the initials in the lower left-hand corner on the second page, and the line "General Counsel to Mr. H. C. Mandeville, Elmira, N. Y." It is stipulated as a genuine document from the files of Hartford-Empire Company.

Q. I hand you that document, Mr. Smith, and ask you to look at that letter and read it.

A. I have read it, Mr. Isseks.

Q. Does it refresh your recollection that about that time you attended a conference with Mr. Knox Smith, Mr. Mandeville and Mr. Hazelton?

A. No, it does not.

Q. I will see if I can refresh you a little further. I show you the diary entries for February 24, 1928, and February 25, 1928, and see if that refreshes your recollection that in February, 1928, and having in mind the letter which you have in front of you, which was dated two weeks later, that you attended a conference with Messrs. Mandeville and Hazelton with regard to the milk-bottle problem.

A. No, I have no doubt but what I did, Mr. Isseks, but I [fol. 2071] don't remember it.

Q. Don't you have any recollection at all?

A. No.

Q. Does the letter which I have given you refresh your recollection in any way?

A. Not in a definite way at all.

Q. Have you any indefinite recollection?

A. Yes, I think probably this whole question of getting the infringers to come in was taken up with Mr. Mandeville and Mr. Hazelton.

Q. Does the letter generally set forth what transpired?

A. That I have no recollection of.

Q. I will ask you one more question: who was Mr. Hazelton at that time?

A. He was president of the Berney Bond Glass Company.

Q. Later on he became an executive of Owens Illinois Company?

A. That is correct.

Q. He died shortly after this suit was brought?

A. Correct.

Mr. Isseks: Your Honor, I offer this letter in evidence. It is like one Your Honor admitted two or three exhibits back, from Mr. Knox Smith to Mr. Mandeville. It is stipulated as genuine, and coming from the files of Hartford.

Mr. Emery: I object to it.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 239 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to [fol. 2072] offer and have marked as the next exhibit, #240, consolidated agreement dated April 13, 1928, between Thatcher Manufacturing Company and Hartford-Empire Company. It is a printed copy furnished us by Hartford and stipulated by them as a genuine document.

Mr. Wall: That is not an original.

Mr. Isseks: That is not an original, that is right. It purports to be signed by Hartford-Fairmont Company by F. Goodwin Smith, president; Hartford-Empire Company by F. Goodwin Smith, president; Thatcher Manufacturing Company by R. W. Niver.

Q. Who was Mr. Niver at that time?

A. I think he was president of the Thatcher Manufacturing Company.

Q. Do you remember there was a consolidated agreement in 1928?
A. I think there was.

Mr. Isseks: Your Honor, I offer it in evidence.
The Court: It may be admitted over objection.

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[fol. 2073] At this time I would like to have marked as Government Exhibit 241, photostatic copy of original letter from Mr. Mandeville to the witness, dated April 20, 1928.

Q. Mr. Smith, I show you Government Exhibit 241, and ask you whether you recognize the signature of Mr. Mandeville?
A. I do.

Mr. Isseks: I offer that in evidence.
The Court: It may be admitted, over objection.

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[fol. 2074] Q. Now, Mr. Smith, you remember that when you made your agreement with the Knox Companies in August of 1932,—the exact date is August 25, 1932,—Government Exhibit 151 here,—there was a limitation as to the quantity of milk bottles that the Knox Companies could make, namely, 75,000 gross in any one calendar year?
A. That is correct.
Q. Do you remember that thereafter there were conversations,—I mean after August 25, 1932,—between your Company on the one hand, Thatcher on the other hand, and the Knox people on the third hand, with regards to the Knox people giving up that right and selling it to the Thatcher people?
A. I think there were, Mr. Isseks.
Q. Did you attend any of those conversations?
A. I don't remember.
Q. You knew what was going on, though?
A. Yes, I think so.
Q. Of course, your Company had to approve the transfer [fol. 2075] of the rights?
A. Yes.
Q. And they did?
A. We had to give our consent to the cancellation, yes.

Q. And you did?

A. Correct.

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 242, contract dated December 5, 1932, between the Knox group of companies, it is signed by the Knox Glass Bottle Company by W. I. McDowell, and R. Underwood, and by Thatcher Manufacturing Company by R. W. Niver, president. This contract has been stipulated as a copy of a genuine document by Thatcher Manufacturing Company, and I offer it in evidence.

The Court: It may be admitted over objection.

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[fol. 2076] The Court: It may be admitted over objection.

Mr. Isseks: At this time I would like to have marked as the next exhibit a letter dated February 15, 1934, from Mr. Mandeville to the witness. I will substitute photostat of the original.

Q. Mr. Smith, I show you Government Exhibit 244 and ask you whether you identify the signature of Mr. Mandeville?

A. I do.

Mr. Isseks: I offer this in evidence, Your Honor.

Mr. Emery: Objection.

The Court: It may be admitted over objection.

[fol. 2077] Mr. Isseks: It has been stipulated as a genuine document from the files of Hartford.

(Government Exhibit 244 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Exhibit 245, an original letter dated February 17, 1934, from the witness to Mr. Mandeville. I understand that Mr. Mandeville, the younger Mr. Mandeville, who has been appearing at the various earlier sessions in this trial, furnished this to one of my associates sometime last fall, that is why we have the original.

Q. I ask you, Mr. Smith, whether that is your signature?

A. Yes sir, it is.

Q. You sent that letter to Mr. Mandeville, did you not?

A. Undoubtedly.

Mr. Isseks: I offer it in evidence.
The Court: It will be admitted over objection.

(Government Exhibit 245 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked a photostatic copy of an original letter stipulated as genuine by Corning, from the witness to Mr. Amory Houghton, dated February 17, 1934, as Government Exhibit 246. (So marked.)

Mr. Haight: I wonder whether the Court would not want to know Mr. Amory Houghton was then a director of the Hartford Company, and was right in Mr. Mandeville's vicinity; one was in Corning and the other was in Elmira. Mr. Sayles can tell you the distance apart, but I understand you can throw a ball from one to the other.

[fol. 2078] Mr. Isseks: I will be glad to take that statement. Mr. Amory Houghton was the president of Corning Glass Works.

The Witness: He was.

Q. He was also a director of your company?

A. That is correct.

Q. He was also a director of Empire Machine Company, was he not, as far as you knew?

A. I cannot answer that, whether he was.

Q. He was a stockholder of Empire Machine Company?

A. I don't know whether he personally was or other members of his family.

Q. And Empire Machine owned some 40% of the stock of your company?

A. That is right.

Q. It is true Corning and Elmira are fairly close to each other?

A. Very.

Q. I show you photostatic copy of Government Exhibit 246, and ask you whether the "Goodwin" signed there is your signature?

A. It is.

Mr. Isseks: I offer that in evidence.
The Court: It may be admitted over objection.

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[fol. 2079] The Court: You may have your objection.

Mr. Isseks: At this time I would like to have [fol. 2080] marked as Government Exhibit 247 a letter dated April 12, 1934, from the witness to Mr. Mandeville. This copy is stipulated as genuine by Thatcher Manufacturing Company. I ask the witness whether he sent that letter to Mr. Mandeville?

The Witness: I have no doubt that I did.

Mr. Isseks: I offer it in evidence.

The Court: It will be admitted over objection.

Q. Mr. Smith, you made reference in Government Exhibit 246 your letter to Mr. Houghton, to Buck Glass Company.

A. That is correct.

Q. Where is that located?

A. Baltimore.

Q. Does that company have an unlimited license as to milk bottles?

A. No, not unlimited; a limited license.

Q. As to milk bottles?

A. Correct.

Q. Who is the head of that company?

A. At the present time?

Q. Yes.

A. Mr. Blunt.

Q. He has been connected with that company for some time?

A. Quite a few years.

Mr. Isseks: Government's Exhibit 247 is a short letter from the witness to Mr. Mandeville. (Letter read by Mr. Isseks, last paragraph reading: "I expect Alex Falck here in Hartford next week and I will be glad to take up [fol. 2081] with him the further question raised during our pleasant breakfast engagement last week."

Q. Do you remember, Mr. Smith, what that further question was?

A. Not the least idea.

Q. No recollection whatsoever?

A. No recollection at all, Mr. Isseks.

Mr. Isseks: Your Honor, at this point I ask to have marked the general agreement between Thatcher Manufacturing

Company and Hartford-Empire Company, dated January 1, 1936. I have a photostatic copy here of the original. It is stipulated as genuine by Hartford.

Q. I show, Mr. Smith, the page 21 which bears the signature. Do you identify the signature of Mr. Eldred?
A. I do.
Q. And of Mr. Safford?
A. I do.
Q. And that of Mr. Niver, as president of Thatcher?
A. I would think so.
Q. It looks like it?
A. It looks like it.

(Marked Government's Exhibit 248.)

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted over objection.

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[fol. 2082] Q. Now, that contract, the last contract of '36 is the one you have today, is it not, with Thatcher?
A. That is correct.
Q. Now, I would like to go back to another subject-matter, Mr. Smith, namely the O'Neill Vacuum Machine. You know what that is, don't you?
A. Called Knox-O'Neill.
Q. That is right. Who is Mr. O'Neill?
A. Mr. O'Neill was a manufacturer of forming machines.
Q. It was more than a forming machine, was it not?
[fol. 2083] A. Well, this particular machine?
Q. Yes sir.
A. You are referring to this particular machine?
Q. The Knox-O'Neill machine.
A. It was a combination of a machine which sucked the glass up into a mold, the mold was a blank mold, and it was then transferred to the blow mold and out came a bottle.
Mr. Emery: I would like to have that answer read.

(Read by reporter.)

Mr. Wall: Was that the Knox-O'Neill machine the witness purported to describe?
Mr. Isseks: That is right.

Q. Now, Mr. O'Neill was located where? Do you want to correct that statement?

A. The blank mold wasn't transferred to the blow mold, but the parison, not the blank mold, was transferred to the blow mold.

Q. Let's go a little slow. Way back Mr. Michael Owens brought out a machine called the suction machine?

A. That is correct.

Q. And then you gentlemen developed a type of feeder called a gob-feed machine?

A. Correct.

Q. This Knox-O'Neill machine was in between, a combination of suction and gob-feed?

A. I don't know about its being a combination of gob-feed.

Q. It had some elements of a suction and some elements [fol. 2084] of a gob feeder, did it not?

Mr. Middleton: May I object? Mr. Wall's suggestion of yesterday might be adopted at this point: Let the witness do the testifying.

Mr. Isseks: Oh, sure.

The Witness: Mr. Isseks, I am not an engineer in any sense of the word. I couldn't describe accurately how these various machines run. I think the general statement that in this machine it sucked up the glass, then went through the other machines and out came a bottle, is about the best I can do for you.

Q. You aren't a lawyer and you aren't an engineer.

A. No, and I sometimes doubt if I am even a businessman.

Q. Well, who was Mr. O'Neill; where was he located?

A. I think his shop was in Toledo.

Q. Right here?

A. Yes.

Q. He had a business right in Toledo?

A. I think so.

Q. What was the nature of his business?

A. He was a builder of forming machines.

Q. Wasn't he also building a machine that was in competition with feeders?

A. He had a feeder at one time that was in competition with our feeder, but it infringed our rights.

Q. That is the position you took?

A. Oh, yes.

Q. He took the position it didn't infringe?

[fol. 2085] A. I don't know whether he ever definitely took that position or not.

Q. Didn't he put out a Knox-O'Neill machine which was being sold to manufacturers of glassware for producing glassware?

A. Now, which machine are you talking about? The Knox-O'Neill suction machine?

Q. Did he have more than one Knox-O'Neill machine?

A. Well, Mr. O'Neill early was a builder of forming machines which were used with gob feeders. Now, this Knox-O'Neill machine was an entirely new one that Mr. O'Neill built.

Q. What was the purpose of that machine, as far as you knew?

A. To produce glassware.

Q. In other words, it was a machine that was going to be in competition with your machine?

A. Yes, any other machine, I suppose, is in competition, whether it was legal competition or not, that was another matter.

Q. When you say "any machine" you mean any machine that produced glassware?

A. Yes.

Q. In connection with the Knox-O'Neill machine, did he have to have the feeder, or was it a machine that itself produced the glassware?

A. Quite complete in itself.

Q. Now, do you remember there were conversations which your company had with the executives of Owens after you made your 1924 contract, relating to this Knox-O'Neill machine?

A. No. The Knox-O'Neill machine didn't appear, as I [fol. 2086] remember it, until—well, you are correct, it appeared in the last of '28 or '29.

Q. The Knox-O'Neill machine?

A. Yes.

Q. And before that, was just an O'Neill machine?

A. Just a forming machine.

Mr. Isseks: Your Honor, at this time I would like to direct Your Honor's attention to Government's Exhibits 75, 76, and 77. This is solely for continuity. My statement is not evidence whatsoever. Government Exhibit 75 is a letter from Mr. Knox Smith to Mr. Williams, enclosing a memorandum which is marked Government Exhibit 76, and the first heading under "Procedure" is "O'Neill." Similarly, on page 4 of the same memorandum, Government Exhibit 76, there is a discussion about "O'Neill." I am not going to take time to read it.

Government Exhibit #77 is a letter from Mr. Williams to Herbert Knox Smith, dated June 6, 1925, and on the first page of the memorandum attached thereto there is a discussion also under "O'Neill."

Q. Now, Mr. Smith, I would like to show you a document which is marked Government's Exhibit 249, and which purports to be a letter from the vice-president of Hartford to Henry W. Carter, and ask you whether you wrote that letter, dated June 28, 1926?

A. I have no reason to doubt it.

Mr. Isseks: It is offered in evidence.

The Court: It may be admitted over objection.

[fol. 2087] Mr. Isseks: I will have it read.

(Said Government Exhibit 249 read by Mr. McCracken.)

Q. Mr. Smith, do you remember later on—that letter was in 1926—but that in the early part of 1928 your company was engaged in conferences with the Owens Company with regard to the acquisition of rights which Knox-O'Neill had?

A. Yes.

Q. Do you remember having conferences with Messrs. Belknap, Underwood, Hazelton, Knox Smith, as well as yourself?

A. I attended quite a few conferences, Mr. Isseks. I don't happen to remember that particular one you refer to.

Q. Do you remember attending conferences with Mr. Belknap?

A. Oh, yes.

Q. And with Mr. Hazelton?

A. Hazelton was a name I didn't remember.

Q. Mr. Underwood?

A. Yes.

Q. What was Mr. Underwood's position in the matter?

A. Well, can I clear up one thing? That letter of '26, just read, did not refer to the Knox-O'Neill suction machine.

Q. It referred to an O'Neill type of proposed suction feeder?

A. And not to the machine you are about to talk.

Q. But it was an invention by the same man, O'Neill?

A. It was an invention he built, or was building it, or experimenting.

Q. Now, we are talking, in 1929, about a different machine?

[fols. 2088] A. Entirely different.

Q. What was the difference between the two of them, do you know?

A. Well, one was a suction feeder, where you suck up a slug of glass and then deliver the slug of glass, let it drop into a blank mold.

Q. That was the early one?

A. Yes, that was a pure feeder.

Q. And the second one?

A. This was a combination machine, this Knox-O'Neill suction machine was a combination of a forming, shaping and feeder all in one.

[fol. 2089] Q. In 1929, you were having conversations about the Knox-O'Neill combination machine,—I think that is what you call it?

A. That is correct.

Q. You had Mr. C. B. Belknap present at some of these conferences?

A. I think he probably was.

Q. And Mr. Carter too?

A. He may have been.

Q. Perhaps I can refresh your recollection. I now hand you a piece of paper which has excerpts from Mr. Knox Smith's diary for the month of April, 1929.

Mr. Isseks: I hand your Honor and counsel a copy. I have only three.

The Witness: Do you want to have me read the whole thing?

Q. Read them all. I want to refresh your recollection as to who was present during those conversations.

A. I remember the Buffalo meeting, because I had not been there since I was very young, and attended the Buffalo Fair.

Mr. Isseks: My last question might have given the impression that there were no other diary entries. In Mr. Knox Smith's diary for the month of April, 1929, other than these. I do not want to give that impression. I see I have other excerpts, which I may want to ask the witness about.

Q. You do remember the Buffalo meeting?

A. Yes, sir.

Q. Do you remember that Mr. Hazelton was there?

[fol. 2090] A. Yes, sir.

Q. Do you remember that Mr. Underwood was there?

A. Yes, sir.

Q. Do you remember that Mr. Wright was there?

A. Yes, sir.

Q. Mr. Underwood was the same Mr. Underwood who was connected with the Knox Company?

A. Yes, sir.

Q. Mr. Wright: who was he?

A. A Toledo man.

Q. Connected with Mr. O'Neill?

A. No, I don't think so.

Q. Connected with Owens?

A. I could not tell you.

Q. Mr. Wilson O'Neill: who was he?

A. Mr. Frank O'Neill's son.

Q. Mr. Frank O'Neill was the man who was the head of the company?

A. That is correct.

Q. They were both from Toledo, Frank and Wilson O'Neill?

A. That is correct.

Q. You remember that there were other conferences later on in New York at which were present Mr. Belknap?

A. I do not happen to remember it. I do not deny it.

Q. What were you talking about during those conferences in April?

A. In those conferences, we were trying, as I remember it, to get an option on the purchase, to purchase the Knox-O'Neill suction machine.

[fols. 2091-2092] Q. In your discussions among yourselves, your group and the Owens group, you were talking about the advisability of taking the matter up?

A. Yes, sir.

Q. Discussing the various situations to be taken into account?

A. Yes, sir.

Q. Business considerations?

A. Yes, sir.

Q. You talked those over with Mr. Belknap, did you not?

A. I don't remember actually doing it, but I assume that we probably did.

Q. With Mr. Carter?

A. Yes, sir.

Mr. Wall: Will you please specify which Mr. Belknap?

Mr. Isseks: Mr. C. B. Belknap, the only one referred to in the diary.

At this time I should like to have marked as Government's Exhibit No. 250 a copy of a letter dated April 26th, 1929, from C. B. Belknap to the Owens Bottle Company, attention of Mr. W. H. Boshart. This document has been stipulated as a genuine document by Owens.

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[fol. 2093] Q. I just ask you to read the first paragraph, Mr. Smith.

A. That is all I am doing.

Q. I am showing you, again, the diary entry of April 25, 1929, of Mr. Knox Smith. See if the diary entry refreshes your recollection, and the first paragraph of the letter, looking at the date, too, of the letter, April 26th, 1929, and looking at the diary entry of April 25, 1929, [fol. 2094] that you had a conference with Mr. Knox Smith, Mr. Belknap, and Mr. Carter on or about that date, April 25, 1929?

A. I do not deny it. It is simply that I do not remember the particular conference.

Q. Do you not remember ever talking to Mr. Belknap about that subject matter, and to Mr. Carter?

A. I know I did some time, but just when I could not tell you.

Q. See if I can refresh your recollection. Do you remember telling Mr. Belknap and Mr. Carter, according to your understanding, Mr. O'Neill and Mr. Underwood——

Mr. Middleton: May I object, Your Honor, to reading from this letter?

The Court: Yes, counsel will not read from the communication.

* * * * * * *

[fol. 2095] Q. I direct your attention to the second full sentence of this letter. See if it refreshes your recollection as to any conversations you had with Mr. Belknap and Mr. Carter with regard to the number of machines which you were told by Messrs. O'Neill and Underwood that they claimed they had outstanding, or were going to sell.

Mr. Middleton: Objection.

The Court: Overruled.

A. I don't know. Of course in various negotiations, Mr. Underwood told us he had orders for a great many machines.

Q. He did?

A. Oh, yes.

Q. Did he tell it to Mr. Belknap and Mr. Carter?

A. I cannot remember that, Mr. Isseks.

Q. Looking at the third sentence in that letter, I ask you whether it refreshes your recollection that you were told by Mr. Underwood and by Mr. O'Neill that some of the machines that they had were going to licensees of Hartford?

A. I don't think there is any question about that.

Q. Mr. Underwood and Mr. O'Neill told you that?

A. Oh, yes. Whether that occurred at this meeting or not, I cannot tell you.

Q. That is all right. I am trying to get your recollection. You were told that by Mr. Underwood and Mr. O'Neill, that they had machines on order to existing licensees of Hartford?

A. We were certainly told it by Mr. Underwood very graphically.

Q. Did they tell you some of these machines were out [fol. 2096] on order to existing licensees of Hartford with restrictions as to the types of ware?

A. That particular thing, I don't remember.

Q. Did you pass that information along, namely, that Hartford licensees were giving orders for the Knox-O'Neill machine to Messrs. Belknap and Carter?

A. I cannot remember that, Mr. Isseks. It was general information of the trade at that time.

Q. Did you personally, or your associates in your presence, tell that to Mr. Belknap or Mr. Carter?

A. I have no memory of it.

Q. You knew, did you not, that the Knox-O'Neill machine was being sold rather than licensed?

A. Oh, yes.

Q. You knew, did you not, that if it was sold there were no royalties being collected thereon?

A. That was the plan, to sell the machine outright with no royalties attached.

Q. You knew, did you not, if a Hartford licensee used a Knox-O'Neill machine, and did not pay any royalties, they would not pay any royalties to you, to the extent that that machine produced glassware?

A. That would depend upon how efficient the machine proved to be. It might produce glassware and not be as efficient as the Hartford machine.

Q. But to the extent it produced glassware on the Knox-O'Neill machine, they would not pay royalties to you, would they?

[fol. 2097] A. Oh, no, that is quite right.

Q. You told that to Mr. Belknap and Mr. Carter?

A. That I could not tell you.

Q. Do you not remember saying to Mr. Carter and Mr. Belknap that if the Knox-O'Neill machine was put out commercially, you, too, would have the problem of considering whether or not you would put out a machine that was sold rather than licensed?

A. No; but I think that would be a possibility of having such a problem as that.

Q. Did you not tell that to Mr. Belknap and Mr. Carter?

A. Not that I remember.

Q. Look at the paragraph of the letter and see if it refreshes your recollection.

A. Mr. Isseks, I have told you quite frankly that I do not remember what was said at this particular meeting.

Q. Do you not remember that at that time you were collecting approximately $1,400,000 a year in royalties in connection with Hartford feeders?

A. I remember that we collected a substantial sum of money, but what it was I could not tell you.

Q. Do you not remember at that time Owens was collecting one-half of the royalties over and above $600,000?

A. Oh, yes.

Mr. Wall: Collecting?

The Witness: They were participating in our divisible income.

Q. They were receiving part of what I believe Mr. Carter called a split?

[fol. 2098] A. The contract called for a divisible income after $600,000.

Q. Do you not remember discussing with Mr. Belknap and Mr. Carter that if you put out a royalty-free machine, or if Knox-O'Neill put out a royalty-free machine, the divisible income would be reduced?

A. No, I do not happen to remember. It would be a logical conclusion, though.

Q. Would it not be a natural thing to discuss?

A. Yes, I think it probably would have been a natural thing to discuss.

(Afternoon recess.)

Mr. Isseks: Now I should like to have marked as the next Government's Exhibit a letter dated May 3, 1929, from the witness to Mr. W. J. Belknap addressed the Biltmore Hotel, New York.

The Clerk: Government's Exhibit No. 251.

Q. Mr. Smith, I ask you whether you wrote that letter?

A. I have no reason to doubt that I did, Mr. Isseks.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Haight: May I ask the witness one question: Mr. W. J. Belknap, to whom this letter is addressed, is a patent lawyer who has been heretofore referred to, is he not?

A. He is.

Mr. Haight: And at the time this letter was written, was he representing you, that is, the Hartford-Empire Company, in connection with litigation?

A. In our various litigations, he was.

[fol. 2099] Mr. Haight: Was this letter written to him as an attorney for some advice on kindred matters?

A. I wrote him the letter because he was our attorney.

Mr. Haight: Then I object to the admission of the letter, if Your Honor please, on the ground of privilege.

Mr. Isseks: Just a minute. I should like to ask some questions.

Q. Mr. W. J. Belknap represented Owens at that time, did he not?

A. Not in the feeder litigation.

Q. He represented Owens in connection with various matters, did he not?

A. I just cannot tell you what the actual situation was. He represented us in our feeder litigation.

Q. Look at the letter and see if you did not write him as attorney for Owens, and ask him as attorney for Owens to do something that ought to be done in order to stop Knox-O'Neill.

A. Where do you find any such thing?

Q. You read it. It is the next to the last paragraph. I am sorry. It is the two paragraphs: the one beginning at the bottom of the first page, and the paragraph thereafter. [fols. 2100-2101] A. I don't see how that applies as representing Owens. I am not suggesting that Mr. W. J. Belknap would have anything to do with what the Owens Company might do.

Q. You say in the letter when you take these matters up with "Bun", who is "Bun"?

A. That is his brother, C. B. Belknap.

Q. Did his brother represent you?

A. I have forgotten whether he represented us in any of our suits.

Q. They are both partners in the same law firm?

A. Yes.

Mr. Haight: At that time were they both in the same law firm? Wasn't C. B. representing Owens?

The Witness: I suppose he was representing them. I don't remember the time Mr. C. B. Belknap gave up his law practice.

Mr. Williams: C. B. Belknap came down with Owens in '33.

A. Then I assume Mr. C. B. Belknap was representing the Owens Company. Why not ask somebody that knows.

Mr. Haight: There is no doubt about the fact that Mr. W. J. Belknap was representing you in the Niverson-Weiskopf case?

A. Not in the least.

* * * * * * *

[fol. 2102] Q. Did you consult Mr. W. J. Belknap in connection with the matters referred to in connection with the two full paragraphs beginning on the bottom of the first page and the second page, as an attorney?

A. I don't think there is any question about that, Mr. Isseks. He was our attorney and headed our litigation.

Q. Did the Cox patent belong to you?

A. Yes.

Q. Did the Soubier Patent belong to you?

A. No.

Q. Who did the Soubier Patent belong to?

A. We had a license under it. We had license rights under it—obtained under the 1924 agreement with the Owens Company.

Q. Had you given the license to Owens?

A. Now wait a minute. I cannot tell you. I may be wrong on that because I do not know which suit that exhibit is referring to.

Q. Had you given license to Owens under the Cox Patent?

A. No. Well, I think they probably had rights under that patent but I cannot tell you, Mr. Isseks, because I do not know enough about the patent.

Q. Was Mr. Lloyd Williams representing you at that time?

A. No. He never represented us.

Q. Did Mr. C. B. Belknap ever represent you?

A. Never so far as I know.

Q. And the "Bun" referred to here is C. B. Belknap?

A. Yes.

Q. In 1929 had anybody taken the position that the Government of the United States might find fault if any suit [fol. 2103] was brought by anyone on the Cox or Soubier Patent against Knox-O'Neill?

A. Not that I remember.

Q. I direct your attention to the first full paragraph on page 2, and ask you whether that refreshes your recollection that someone raised the question the government might take the position that it was improper for your company or the Owens Company to take action or bring suit against the Knox-O'Neill machine?

A. The question was undoubtedly raised; otherwise I probably would not have mentioned it in the letter because I am not a lawyer.

Q. Did anybody raise it in the Hartford organization?

A. That I don't remember.

Mr. Isseks: I understand Your Honor will defer the admission of this letter? Will counsel fix time for their briefs?

The Court: The briefs will be in your hands Monday.

Mr. Middleton: They will be in their hands before Monday.

Mr. Isseks: May we expect brief from Hartford too?

Mr. Haight: Oh, no. We won't file separate briefs.

Mr. Isseks: At this time I want marked a series of documents furnished us in original form. The first is letter July 30, 1929, and purports to be signed Herbert Knox [fol. 2104] Smith, addressed to the witness, F. Goodwin Smith, Esq., somewhere in Europe. I would like to have that marked first.

(Clerk marks the Exhibit No. 252.)

Q. I show you photostatic copy of this document, two pages, and ask you if you identify the signature of Herbert Knox Smith?

A. I do.

Q. Do you remember you were in Europe in the summer of 1929

A. Correct.

Q. Do you remember seeing a number of documents from Mr. Knox Smith relating to the subject of O'Neill suction machine?

A. Yes, just before returning I received a large batch of documents.

Q. The letter which I just showed you was the accompanying letter, was it not?

A. Yes, that was the accompanying letter.

Mr. Isseks: I would like to offer the enclosures. We have been furnished with all copies of the enclosures but one, we are advised by counsel, and I understand they will furnish us with that one later. There are two extra portions of the copies that are not in your books. I would like to have the memorandum of July 30, 1929, which is the first enclosure, which purports to be a summary marked as Exhibit 253.

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[fol. 2105] The Court: Do you have any enclosures with 252?

Mr. Isseks: All of these documents are enclosures. The first one, 253, July 30, 1929, is headed Knox-O'Neill Summary.

[fol. 2106] Mr. Wall: The page number on the lower right hand corner is 2774 to 2780, inclusive.

Mr. Isseks: 254, Your Honor, is a four page memorandum which is enclosed within 252, and it is headed "Memo to H. K. Smith from S. F. Parhan, July 29, 1929, in re Patent Situation, etc." They are numbered on the bottom, pages 2742 to 2745, inclusive.

The next portion or enclosure, Your Honor, is a fifteen page memorandum which starts in, "Memorandum to Mr. H. K. Smith from Mr. Peiler", paged on the top 1 to 15. The first four pages, at the end of the fourth page there is a signature Karl E. Peiler. Then the fifth page starts Section 47, Comparison.

The Court: How many pages?

Mr. Isseks: Fifteen.

The Court: Do you want to number this 255?

Mr. Isseks: Yes. The numbers on the lower corner are 2748 to 2761, inclusive. Your Honor, I would like to show Mr. Wall it is 2748 to 2761. Oh, page 7 is missing. When I said pages 1 to 15, there is a page 7 in sequence missing, so there is only a total of fourteen pages.

Mr. Middleton: Is there a number on the bottom of page 5, the page following that signature page?

Mr. Isseks: Yes, sir, 2752. Now, Your Honor, all these documents are numbered, and at page 15, paragraph number—Section 73 to 91, inclusive, have not been furnished the government up to now. We have asked for it and they are going to give us a copy soon.

[fol. 2107] Then I would like to have marked Exhibit 256, a two-page memorandum, headed "Reasons for Draft of Plans Set Forth Below".

The Court: I am afraid you are going to get a lot of confusion identifying so many exhibits in advance.

Mr. Isseks: They are all part of the enclosure, and I think in view of the fact they are separate pieces of paper there is no way to identify them unless we mark them different numbers.

The Court: Proceed.

Mr. Isseks: The next piece of paper is headed "Plan". I just gave Your Honor a copy. It will be Exhibit 257. The first page number is 13. It runs to page 21. And then there are two pages attached to it called "The Suction Field". I would like to have it all clipped together. It was furnished us yesterday by counsel as one exhibit.

* * * * * * *

[fol. 2108] (Monday, March 17, 1941, at 10 o'clock a. m.)

Mr. Sayles: If Your Honor please, may I note a correction? In the minutes on page 324, in the fourth line, in describing the contract with Owens in 1924, the minutes read as though Corning were a party, and the word "Corning" in that line should be changed to "Graham".

Mr. Isseks: That is right, Your Honor.

The Court: That may be done.

There have been some exhibits offered to which objections have been made and the Court has held them under advisement pending receipt of briefs. The exhibits 46 and 47, 48 and 53—and I am not certain about 54, whether 54 has been admitted or not—can the Clerk advise me?

The Clerk: No, it has not.

Mr. Isseks: 54 has been admitted.

The Court: Is that the diary?

Mr. Isseks: No sir, that is the memorandum dated March 18th and 19th, written by Knox Smith, of a conference which the witness attended with Messrs. Blair and Belknap, and your Honor admitted it after some colloquy, according to my notations.

The Court: 54 is admitted then?

Mr. Isseks: Yes.

The Court: 46, 47, 48 and 53 are the four that I have in mind at this time. Those are exhibits that have application to the diary of Knox Smith.

Mr. Isseks: That is right, Your Honor.

[fol. 2109] The Court: I have decided to sustain the objection to those four offerings, for the reason that to my mind the diary is a private diary and is kept for the purpose of making private entries, as distinguished from the case that was cited, and for which I was looking, but cannot now locate, wherein the lawyer kept a diary of his daily doings in his desk for the benefit of future reference and perhaps for the benefit of his partners, in order to keep a daily record of the discussions with reference to the various phases of business that came before him. This, it seems to me, is more in the nature of a private document that was kept for the personal benefit of Knox Smith, and, while it may have been of some advantage during the past 20 or 22 years to the officials of the Hartford Company,—it was located in their files,—yet I look upon it more as a private reference-book that Knox Smith kept, not alone for matters with reference to the alleged conspiracy, but of matters personal as well as business that came before him. So those four exhibits will be refused.

Exhibits 15 and 34 are letters written by Knox Smith. In the case of 15, I think, to Mr. Sayles; and in the case of 34 to J. C. Blair. I am going to overrule the objections and admit those letters, not as evidence of the truth of what they may contain, or as statements of any third parties which are quoted in the letters, or may be quoted, but on the question of design, purpose and intent, or state of mind of Knox Smith, showing his state of mind as well as, [fol. 2110] perhaps, the Hartford-Empire or the Hartford-Fairmont Company's, which he was representing in an official capacity at the time these letters were written.

Exhibit 35 is perhaps the only exhibit that is not signed or bears the initialing of Knox Smith, yet it seems to the Court that Exhibit 35 is sufficiently identified in the Exhibit 34 as to permit its admission, and the objection, therefore, to 35, will be overruled.

Exhibit 33, which consists of questions raised by the license plan, and bears the stamp of receipt of Mr. Honiss; Exhibits 25, 31, 32, 42 and 44, are all documents that set forth statements made by persons other than the witness, and therefore, insofar as those statements are concerned, they are not accepted for the purpose of bearing on the truth of those statements, and if I am not mistaken the record shows that the Government does not so offer them;

but they are accepted for the purpose of showing design, purpose and intent, or state of mind of Knox Smith, not only he himself but of the companies which he represented, in the case of the Hartford-Empire as a stockholder, as a director, as secretary-treasurer and as treasurer; and of the Hartford-Fairmont Company, as a stockholder, director, and as secretary, indicating the agency relationship with those two companies, and speaking for those companies in an official capacity. The Court, therefore, admits those exhibits over the objections of the defense. The usual objections going to the materiality may be retained in the record.

[fol. 2111] Mr. Middleton: Does that, Your Honor, include Exhibit 33, the first one discussed?

The Court: #33 I discussed first.

Mr. Isseks: Did you admit that?

The Court: 33 is included.

Mr. Isseks: Thank you very much. May I have a second to see whether there are any other exhibits which Your Honor deferred that are in the same category?

The Court: I will say to counsel that the defense, in its brief, as to the latter exhibits the Court has admitted, takes the position, "It is manifest that the declarations offered were not made in furtherance of any alleged conspiracy. The memoranda are merely narrating reports of the occurrence of past events." I cannot quite agree with that statement. They are reports or memoranda not of past events, insofar as the alleged conspiracy was concerned, but in furtherance, perhaps, of a conspiracy, not with reference to past events. That was my view of the situation, insofar as that defense is put up.

Mr. Isseks: Your Honor, Exhibit 233, which is a memorandum which we couldn't tell the date of, you will recall there was a perforation in the page, that was offered I believe, on Friday, or perhaps late Thursday.

The Court: Yes.

Mr. Isseks: That, Your Honor, we couldn't tell the date of, it was March blank, 1925, because there was a hole in the place where the date should be. That Your Honor took under deferment because it was like the ones Your [fols. 2112-2113] Honor has just admitted.

The Court: That will be admitted.

I want to raise the question about certain other exhibits that I have on my record here, that perhaps I have omitted checking as they were admitted.

Mr. Isseks: Your Honor, my record shows there are three involving the relationship of attorney and client, namely, Exhibits 127, 250 and 251. To 127 and 250 objection has been raised by Owens; and to 251, objection raised by Hartford-Empire.

The Court: That is correct.

Mr. Isseks: Everything else, now, I think has been admitted as far as our records show, except the four which Your Honor indicates today, diary entries which Your Honor has excluded.

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[fol. 2114] Mr. Isseks: I understand as to the diaries, we may still continue to show the diaries to the witness for the purpose of refreshing his recollection?

The Court: For the purpose of refreshing his recollection.

• • • • • • •

[fol. 2115] Q. Mr. Smith, the last question that was asked you was to take these papers and advise the Court whether Government Exhibit 253 to 257 were the enclosures referred to in 252.

A. I don't think there is any doubt about it.

Q. In fact there may be one enclosure missing?

A. That I don't know.

Mr. Isseks: I offer these in evidence, 252, 253, 254, 255, 256 and 257.

Mr. Haight: There is one communication in there from Mr. Parham, the patent attorney of the Hartford-Empire Company, to H. K. Smith. We will not object to it if it is understood in not objecting to it we do not waive our right to object to further communications to Mr. Parham on the ground of privilege.

Mr. Isseks: That understanding is all right. Of course we don't agree anything Mr. Parham wrote is privileged, but we accept the stipulation.

Now, Your Honor, before I have any part of this read, there are a few other pieces of paper that we were [fol. 2116] told were part of the enclosure. I would like to have those few pieces of paper—six pages—marked as one exhibit, and ask the witness whether they were a part of the enclosure? That will be Exhibit 258. 258 has across the front of it, "Terms of Purchase of O. S. M. Rights," the first four pages, and it begins with Section 73—those are the first four pages. The last two pages have on the top, "Amendment to Proposed Counter-offer of Underwood, pages 18 and 19," starting with Section 91½.

Q. I would like to ask Mr. Smith whether these pages, too, were part of the enclosure, as far as you can recall?

A. Well, I would not recall the particular pages, but I think the encyclopedia was sent me by Mr. Knox Smith, and was not complete; in other words, that these sections were not in the other exhibit. I would say that I received these sections because of their numerical numbers.

Q. And what you received was complete?

Mr. Middleton: I didn't hear what he said.

The Witness: This encyclopedia was sent me by Mr. Knox Smith. It has over a hundred sections or paragraphs that were numbered, and if these particular numbers here did not appear in the exhibit which I've just been presented, I have no reason to doubt but what I received those particular sections.

Mr. Isseks: Your Honor, these sections are not included in 252 to 257, inclusive, therefore I offer them in evidence.

• • • • • • •

[fol. 2117] The Court: They may be admitted over objection.

Mr. Isseks: At this time I am not going to take the time to read more than 252 and 253, the original letter and the summary written by Knox Smith. I would like to ask my associate to read that.

(Exhibits 252 and 253 read by Mr. Lewis.)

Q. Now, Mr. Smith, when you got back from Europe, of course, you had already read the encyclopedia, had you not?

A. I think I read it on the steamer coming back.

Q. And did you participate in any further negotiations with regard to the proposed Knox-O'Neill machine deal?

[fol. 2118] A. Yes.

Q. With whom, please?

A. I cannot tell you. I think there were two or three meetings, but we finally turned the whole proposition down.

Q. Who was at these meetings?

A. Well, there was one meeting we had with representatives of the Owens Company. I think that was the final meeting when we turned the whole thing down.

Q. Who were the people?

A. I remember Mr. Levis being there, from Owens.

Mr. Middleton: I would like to have the previous answer read.

(Previous answer read.)

Q. Anybody else?

A. I remember Mr. Levis being present at one of the meetings, I think it was the final meeting.

Q. Who else besides Mr. Levis, do you remember?

A. Not definitely. I think Mr. C. B. Belknap was present.

Q. Mr. Carter?

A. He might have been, although I am not sure.

Q. What did you say among each other which resulted in your turning the whole thing down?

A. I cannot tell you just what was said, Mr. Isseks, I was never very enthusiastic about the proposition anyway. There was always a question about getting the money to do it, and that long encyclopedia tells about some plans of Mr. Howard on a new machine, and from my point of view—and this is just recollection—I mean it is hazy—I don't [fol. 2119] think I felt that the machine—the Knox-O'Neill machine—had established itself, had proved itself for the general range of wares sufficiently economical; but that is more or less kind of a hazy recollection.

Q. Do you remember why the Owens group and the Hartford group decided to turn it down? is what I want to know.

A. I don't think we felt the thing was going to succeed.

Q. That is your best recollection?

A! That is my best recollection.

[fol. 2120] Q. You said somethnig about financing, which raises a question I intended to ask you some time ago, in connection with the Tucker, Reeves & Beatty matter. Do you remember that?

A. Yes, sir.

Q. It cost you collectively $1,600,000?

A. $800,000 apiece.

Q. Did your company finance your share of it by monies from your own resources?

A. Partially so, as I remember it; and I think the balance we gave notes for.

Q. To whom?

A. Borrowed from Owens.

Q. How much did you borrow from the Owens Company in connection with your share of $800,000?

A. 600,000.

Q. In other words, Owens put up a Million Four and you put up $200,000, and gave Owens $600,000 in notes?

A. I think that is correct, subject to check.

Q. You were still interested in the fact that Knox-O'Neill were around, were you not, even though you turned it down?

A. I don't know just what you mean by that.

Q. I will ask you another question. They were a competitor, were they not?

A. Yes, they started off to put machines around in several plants. Mr. Underwood equipped his plant, I think; and I have forgotten just how many were installed.

Q. There were some?

A. There were some.

[fol. 2121] Q. For the manufacture of glassware?

A. Yes, sir.

Q. They were a competitor of yours?

A. Yes; and infringed some of our rights.

Q. That is the view that you took?

A. Yes, sir.

Q. They took the position that they did not infringe?

A. That, I don't know.

Q. Did you have any suction patents?

A. I think we had—not on the machine—I cannot answer that because you have got feeders; and then you have farming machine patents; and then you have some furnace patents; so I would not know just how, from an engineering standpoint or a patent standpoint, to answer your question.

Q. Did the Owens Company sue Frank J. O'Neill, as far as you know?

A. I don't know, Mr. Isseks.

Q. Did you sue Mr. O'Neill's company?

A. Not according to my recollection.

Q. Do you not remember that the Owens company brought suit in the United States District Court for the Northern District of Ohio against Mr. O'Neill?

A. If they did, I have forgotten it.

Q. My question before was whether or not you were not still interested in the fact that O'Neill, aided and abetted by Underwood, were putting out their machines with glassware manufacturers?

A. I suppose I naturally was.

[fol. 2122] Q. In that connection, I show you a letter dated December 20, 1929, which I am having marked as Government's Exhibit No. 259, from yourself to Mr. Carter, and ask you whether you wrote that letter?

* * * * * * *

Q. The question is, Mr. Smith, whether you wrote it?

A. I did.

Mr. Isseks: I offer it in evidence.

Mr. Middleton: Objection.

[fol. 2123] The Court: This is a letter from the witness to Henry W. Carter?

Mr. Isseks: Yes, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit 259 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, you continued to show, did you not, an active interest in the Knox-O'Neill machine?

A. There is no question but what we had an interest in what the machine was doing and how it was getting along.

Q. It was a competitor, was it not?

A. Yes, sir.

Q. Do you not remember that you were anxious to safeguard your interests, and therefore kept in touch with what the Knox-O'Neill machine was doing?

A. Oh, yes, we were always anxious to safeguard our interests.

Q. Do you not remember that you were anxious to get hold of somebody who was familiar with the operations of the Knox-O'Neill machine?

A. It might have been so, Mr. Isseks.

Q. Do you not remember that you were interested in making sure that Knox-O'Neill did not get a man who might help them develop their type of machinery?

A. I don't remember any specific occasion.

Q. Do you remember Mr. Schwenzfeier?

A. Yes, sir.

Q. A local man, is he not?

[fol. 2124] A. Mr. Schwenzfeier used to work for the Owens Company and, I think, retired.

Q. He worked for Hartford, did he not?

A. He did.

Q. Do you remember the circumstances under which you hired Mr. Schwenzfeier?

A. I think we thought it would be a good idea to have on our staff a man who had had experience in operating suction machines. He knew all about the suction process.

Q. Do you not remember that one of the considerations that motivated you was a desire to make sure that Mr. Schwenzfeier would not associate himself with Knox-O'Neill?

A. I do not happen to remember that particular point.

Mr. Isseks: At this time, Your Honor, I offer a photostatic copy of an original letter dated March 10 from the witness to Mr. Carter, as Government's Exhibit 260.

Q. Mr. Smith, is that your signature on the photostatic copy?

A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 260 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Now, Mr. Smith, do you recall that about a year after you wrote this letter, about six months after you wrote this letter, you had a conference with Mr. Hazelton, then an executive of Owens, with regard to the Knox-O'Neill situation?

A. I do not happen to remember. I do not deny it.

[fol. 2125] Q. You do remember, do you not, that a time came when Mr. Frank O'Neill was bought out?

A. There was a time later on in, I think it was 1933, when Mr. Frank O'Neill wanted to retire from business.

Q. He was bought out?

A. Yes, sir.

Q. Do you remember how much was paid?

A. No. We bought odd gob feed patents from him. We gave him an annuity.

Q. Which aggregated how much?

A. I think it was about $80,000, 80 odd thousand dollars.

Q. Do you not remember having conversations with the Owens people in connection with the buy-out of Mr. O'Neill's business?

A. I particularly myself do not happen to remember; but I think there were conversations with them.

Q. Do you not remember being consulted by your people about the fact that Mr. O'Neill was going to sell out his business for a half a million dollars?

A. I remember our people coming to me and saying that Mr. O'Neill was going to sell out; and he had certain patents, gob feed patents—and I am not sure whether there was a forming machine patent or not; and that their recommendation was that we purchase it.

Q. Did they tell you how much you were supposed to pay?

A. Naturally, when the deal was made, they came to me and got authority for the payment to Mr. O'Neill, which he wanted in the form of an annuity.

[fol. 2126] Q. Whom did you make the deal with?

A. Mr. O'Neill.

Q. Do you not remember that Owens had a contract to buy him out?

A. I don't know what Owens paid. I know that they bought the suction rights from the O'Neill Company.

Q. Did you not talk to Mr. Levis before this deal was made?

A. That I cannot remember; I would not say I did not; but I think most of that deal was made by our patent man.

Q. What is your best recollection as to who made the deal on behalf of Hartford?

A. I think the arrangements were made, most of them, by Colonel Brown; and of course he got my authority to accept Mr. O'Neill's offer. I don't know whether Mr. O'Neill came on the Hartford, or whether it was done by correspondence; I cannot tell you; but I know that we gave Mr. O'Neill an annuity policy.

Q. Do you remember having any talks with Mr. Levis about the matter?

A. No, I do not.

Q. Mr. C. B. Belknap?

A. No, I don't remember; but I would not deny that I did have some talks either with Mr. Levis or with Mr. Belknap.

Q. Do you not remember having talks with Mr. Levis or with Mr. Belknap about the desirability of buying out Mr. O'Neill, and they taking the suction rights, and you taking the feeder rights?

A. No. As far as I remember, Mr. O'Neill's business [fol. 2127] was for sale. Now where we first learned that, I don't know. We might have learned it from the Owens Company. But Mr. O'Neill had these odd patents which were gob feed patents, with possibly a forming machine patent; and we thought we would prefer to have them. They were not very valuable. They had one or two claims in them that might have become a nuisance value in the hands of somebody else. So we bought them.

Q. Do you not remember that Owens made the deal for half a million dollars; and that Owens gave you—told you they would give you the feeder rights if you would put up $100,000.

A. No, I don't remember that. Do you misunderstand me, Mr. Isseks. I knew that the Owens Company had been negotiating with the O'Neill Company for suction rights.

Q. The Owens people were not interested in leaving the feeder rights with O'Neill, were they? They were interested in helping you out, were they not?

A. I don't know as I quite understand the question.

Q. Do you not remember Mr. Levis telling you that it would be to the best interests of Hartford and Owens to get O'Neill and sell out all parts of his business?

A. No, sir.

Q. Do you not remember that?

A. No, sir.

Q. Do you not remember that part of the arrangement was that Mr. O'Neill would agree to stay out of business in the United States for a fixed period of time?

[fol. 2128] A. No, I do not even remember that.

Q. You knew that he went to Canada?

A. Later on I learned that he moved to Canada; I don't know how many years later.

Q. He went into business in Canada?

A. He did.

Q. He is in the business of making the O'Neill machine over there, is he not?

A. I don't know whether he is or is not.

Q. You do not mean to say flatly that you did not talk with Mr. Levis about buying out O'Neill?

A. I say flatly that I do not remember talking to Mr. Levis about it; but I would not deny that I never did.

Q. Do you not remember that you did, in 1933, what you planned to do in 1929; but got it for about half the amount?

A. No, the two things had no conection at all. In 1929 here was a new machine that came in like a cyclone. Everybody was ordering it. I don't know of anything that stirred the trade as the advent of that Knox-O'Neill machine. And then it went out like a lamb.

Q. In 1933 it was absolutely no good?

A. The machine itself,—there were very few operating, and there are few operating today; but the machine itself, we never considered an economic machine to operate.

Q. Was it worthless in 1933?

A. No, it was not worthless. Roy Underwood was operating them, and still is today, a few of them; but I don't know [fol. 2129] of any others that are operating.

Q. In 1929, you were talking about paying a million dollars, were you not?

Mr. Haight: What do you mean by "you"?

Mr. Isseks: Owens and Hartford. Thank you very much, Judge.

Q. Altogether, it was a little over a million dollars, was it not, in 1929?

A. That is right.

Q. In 1933 you paid collectively a half a million, did you not?

A. I know what we paid for our gob feed and forming machines patents, I have told you what we paid for those.

Q. Did you know that Owens was paying $400,000?

A. I don't think personally I knew what Owens was paying. I did not care very much. I did know that Owens—of course we were advised by somebody that Owens was going to buy from Mr. O'Neill his suction rights and some other things. I did not even know what the deal included.

Q. You did not know that Mr. O'Neill agreed to stay out of business for five years?

A. I may have known it at the time.

Q. You knew at the time, too, did you not, how much Owens was going to pay?

A. No, I don't think I really did. I don't think I was ever advised of the terms of the contract. I may have been advised, yes, that they were going to pay 400 or 450 or 375 thousand dollars. I may have known it.

Q. And at that time, in 1933, Owens was still participat-[fol. 2130)] ing, was it not, in this divisible income?

A. In our divisible income?

Q. Yes.

A. Oh, yes. That is quite right.

Q. Owens at that time was still interested, was it not, in who was manufacturing automatic equipment?

A. What do you mean? I don't know as I get—

Q. It had the same interest you had in whether or not the licensees were buying equipment from Knox or leasing equipment from you?

A. I would not know how to answer that. Naturally anybody would be interested in having the manufacturers use Hartford equipment; the more Hartford equipment used, the greater our income.

Q. And the better off Owens would be?

A. Yes, sir.

(Morning recess.)

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 261 a memorandum which has on the top: "Interview with Mr. Hazelton, November 29, 1930". The copy has been stipulated as a genuine document by Hartford-Empire Company. It is a memorandum which is signed at the end by Mr. Knox Smith.

Q. I hand you this memorandum, Government's Exhibit 261, and ask you whether you remember the conversation referred to in the memorandum.

(Witness reads memorandum.)

Q. The question is, Mr. Smith, whether you recall the [fol. 2131] conference.

A. The only thing I remember about this particular conference was a question pertaining to the Hamilton Glass Company,—really, J. T. & A. Hamilton. About that time they were not very strong financially, and were having some trouble. I know that Mr. Hazleton did come to Hartford, very infrequently; once a year, once in eighteen months; and I would have no reason to deny that a conference did take place in Hartford.

Mr. Isseks: Your Honor, I offer the document in evidence.

The Court: It may be admitted over objection.

Mr. Isseks: At this time, I should like to read, only, paragraph 8 only, beginning at the bottom of page 1 and then going to the bottom of page 2.

Thereupon, paragraph 8 of Government's Exhibit No. 261 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Mr. Smith, do you not remember towards the end of 1931, you had a conference with Mr. Levis with regard to someone obtaining an option from O'Neill relating to O'Neill's properties and patents?

A. No; but I would not deny it.

Q. Do you not remember you were told that Mr. Harry Collin was going to get such an option?

A. No, sir.

Q. You know Mr. Harry Collin?

A. Yes, I have met Mr. Collin, very infrequently.

[fol. 2132] Q. Who is Mr. Collin?

A. I think he is today a director of the Owens-Illinois Bottle Company.

Q. He is also in a business which relates to promoting?

A. He is in the investment business.

Mr. Wall: Collin and Norton, brokers.

Mr. Isseks: Stockbrokers, I assume.

Mr. Wall: That is correct.

Q. They were also engaged in investment banking at one time?

A. I don't know.

Q. A defendant in this case?

A. I don't know that Mr. Isseks:

Mr. Isseks: Your Honor, he is a defendant and a director of Owens.

I should like at this time to have marked a document dated November 7, 1931. I will have copies made for Your Honor. We did not tell counsel about this because we did not know about it until ten minutes ago.

The Clerk: Government's Exhibit 262.

Mr. Isseks: It is from Mr. Henry W. Carter to the witness, with a carbon copy to Mr. Levis. The document has been stipulated as genuine by Owens.

Q. I ask you, Mr. Smith, whether you received that letter in the regular course of business?

A. I do not happen to remember it, but I do not deny it.

Mr. Isseks: I offer it in evidence.

The Court: What date does it bear?

[fol. 2133] The Witness: November 7th, 1931.

* * * * * * *

Mr. Middleton: The admission is over objection, Your Honor?

The Court: Yes.

Mr. Isseks: I should like to have it read.

Thereupon, Government's Exhibit 262 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Middelton: May we, Your Honor, point out that Mr. Collin, who is referred to there, is not an officer of Owens and never was. At one time in recent years, I think he went on the Board; but he is engaged in his own business, and always has been, in Toledo. It is the position of Owens in this matter that he was acting as an individual, pursuing [fol. 2134] his individual business, and not as one authorized by Owens-Illinois to act for it.

The Court: At this time, in November, 1931, he was not a director?

Mr. Middleton: I am not certain as to when he went on the Board. I know he was not an officer and never has been.

Mr. Isseks: As far as the government knows, he never has been an officer; but my recollection is that in connection with the Hazel-Atlas deal—I see according to the Owens answer he has been a director since July 23, 1926. I was about to say I remembered in the Hazel-Atlas deal, he participated in approving it. I am sure the answer is accurate. It is signed by Mr. Middleton and Mr. Williams. I take it as an accurate statement that he was a director July 23, 1926.

Mr. Middleton: If Your Honor please, we shall accept our own statement, if it is in there. The fact is that he has always pursued his own business, and never has been connected with Owens at any time, except as a director.

Mr. Isseks: I have no reason to dispute that, Your Honor.

Q. Does this letter, Government's Exhibit No. 262, refresh your recollection of a talk you had in the latter part of 1931 with Mr. Levis regarding O'Neill?

A. No, it does not; but I of course do not deny it. It did refresh my recollection that Mr. O'Neill claimed along that period—I cannot tell you whether in the fall or the follow- [fols. 2135-2137] ing year—that he had certain claims which we thought over-lay the Lynch machine. And that is about all I get out of that.

Mr. Isseks: Your Honor, at this time I should like to have marked as the next exhibit 263 a copy of an agreement dated March 6, 1933. It is not copied in Your Honor's book. It has been given to us as a copy of a genuine document by Owens-Illinois. It is between the O'Neill Machine Company, by Frank O'Neill, president; signed also by Frank O'Neill, Marion O'Neill and Wilson M. O'Neill—those four parties constitute the parties of the first part; and then it is signed by the Owens-Illinois Glass Company, by William E. Levis, president. The copy furnished us is a copy of the original and, as I said, the stipulation is by Owens.

In the front of this agreement, which is the option, there is a letter dated April 4, 1933, addressed to the O'Neill Machine Company, O'Neill Engineering Company, Frank O'Neill, Wilson O'Neill, and Marion O'Neill, and signed by the Owens-Illinois Glass Company, by William E. Levis, president. Then there is a notice of the receipt of the letter, signed the O'Neill Machine Company, by Wilson M. O'Neill.

I offer the document as furnished us as a single exhibit. The letter exercises the option.

The Court: It may be admitted, over objection.

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[fol. 2138] Mr. Isseks: Now, Your Honor, at this time I would like to have marked a contract for the sale of certain assets from the O'Neill Machine Company, Frank O'Neill, Wilson O'Neill and Mary O'Neill, to the Owens Glass Company. This contract is dated May 6th, 1933.

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[fol. 2139] The Court: Do you offer Exhibit 264?

Mr. Isseks: Yes.

The Court: It will be admitted over objection.

Mr. Isseks: I now offer an assignment dated May 5, 1933, the day before the previous contract, and it purports to be dated May 3, 1933, in the form of a letter and approved May 5, 1933. There is attached to this document of May 3, 1933, first an assignment by Mr. O'Neill of certain patents, and then a license by Mr. O'Neill on certain patents, and then a letter of June 28, 1933, from the witness as president of Hartford, to Marshall, Melhorn, Marlar & Martin, apparently of counsel for Mr. O'Neill. There is also a letter of June 30, 1933, from Mr. O'Neill to the Hartford-Empire, attention of the witness. Then there is an executed license at the end, signed by Mr. Frank O'Neill, dated May 19, 1933. The first paper is signed by Mr. Frank O'Neill and marked "Accepted: May 5, 1933, Hartford-Empire Company, by F. Goodwin Smith, president," and I offer the documents, Your Honor, as one exhibit, 265.

The Court: Assignment by O'Neill to Owens?

Mr. Isseks: To Hartford, Your Honor.

Mr. Middleton: This first letter, Mr. Isseks, is dated May 3, 1933?

Mr. Isseks: That is right, but it is marked "Approved May 5th."

Mr. Middleton: Miami, Florida?

Mr. Isseks: That is right.

[fols. 2140-2141] The Court: It may be admitted over objection.

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[fol. 2142] Another document I would like to have marked, dated January 16, 1937, agreement from Mr. Safford, as secretary of the Hartford-Empire Company, to Mr. Underwood, president of the Knox Glass Bottle Company, and accepted on January 21 by Mr. Underwood. I would like to offer that as the next exhibit, 267. It is signed at the end of it by Mr. Underwood in a statement dated January 21, 1937, that he agrees to the foregoing. I offer it in evidence.

The Court: It may be admitted.

Mr. Isseks: All this paper does is amend the detail of the previous contract permitting the operation of a certain number of units after the erection of a certain building.

Q. Now, Mr. Smith, do you know whether or not Mr. O'Neill has gone in the business of manufacturing automatic equipment, glass equipment, in this country, at the expiration of the five-year period when he agreed to step out?

A. No. I do not know.

Q. As far as you know he is not in the business?

A. As far as I know he is not.

Q. So far as you know, your company is the only one [fol. 2143] that manufactures equipment for automatic distribution?

A. Oh, no.

Q. Who else is there?

A. Lynch.

Q. Feeders?

A. Gob feeders. Yes.

Q. Any kind of feeders for distribution?

A. I don't know whether the French Roirant Machines are here or not.

Q. You don't know either way?

A. No.

Q. On forming machines, your company manufactures and licenses forming machines?

A. Yes.

Q. By "manufacture", you have it done by this agent of yours, do you not?

A. Most of it.

Q. Then you say there is another company that manufactures and sells them, namely Lynch?

A. Correct.

Q. No other company, so far as you know, on the forming machine?

A. No. There may be a few shops that builds special forming machines, but I could not tell you who they were.

Mr. Haight: I do not like the word "agent" in the question to mean more than what the witness has already testified was the relationship between the Hartford-Empire Company and the Hartford Special Machinery Company. [fol. 2144] If it is so understood, well and good.

Mr. Isseks: It is all right to me, what the witness testified to before his relation between the Hartford Special Machine and the Hartford-Empire.

Q. Now, Mr. Smith, I am going to another subject and I would like to ask you some questions about Anchor-Hocking Company so far as you know. You testified already—and you correct me if I am misquoting your testimony—that your original company, Hartford-Fairmont, was organized by three different groups. Tell us who they were again.

A. Monongah Glass Company representing one group, the Beech Nut Packing Company representing a second group, and the Engineers in Hartford representing the third group.

Q. Beech-Nut Packing Company is still a large stockholder in your company, isn't it?

A. That is true.

Q. In other words, in 1922, when you changed from Hartford-Fairmont to Hartford-Empire Company, Beech-Nut acquired a substantial interest in the new company?

A. Whatever they were entitled to.

Q. Whatever their pro-rata interest was they retained it in the new company?

A. That is right.

Q. And they still have it?

A. Yes.

Q. When 1922 came around and you organized Hartford-Empire, the new interest, namely the Empire machine [fol. 2145] group acquired, I think you testified, more than 40 per cent of the new company?

A. That is right.

Q. Whatever that percentage is, it is more than 40 per cent?

A. Between 40 and 45.

Q. And they still retain that interest so far as you know?

A. Yes. Now——

Q. Do you——

Mr. Haight: Wait a minute. Let him finish.

A. I do not know. The Empire Machine Company was dissolved last year.

Q. Whoever was entitled to it in dissolution has the interest?

A. The individuals have that interest but not the company.

Q. Who are those individuals?

A. I cannot name them all.

Q. They are the Houghton group, are they not?

A. Part of them, Mr. Falck, Dr. Day, and others.

Q. But they are people connected with Corning apparently?

A. Yes.

Q. Or the Houghton family?

A. Yes.

Q. As of the date of this suit, December 11, 1939, it was the Empire Machine Company?

A. That is correct.

Q. They continued their interest between 40 and 45 per cent between '22 up to the date of dissolution, whatever it is, of the Hartford-Empire Company?

A. That is correct.

[fol. 2146] Q. Now Monongah Company in 1914 or '15, they had a substantial interest in your company, did they not?

A. They were incorporated in 1912. Three parties incorporated Hartford-Fairmont.

Q. When 1922 came around you said Beechnut acquired its pro rata share in Hartford-Empire?

A. Yes.

Q. Did Monongah acquire its pro rata share?

A. Yes.

Q. Do you recall what that interest was practically?

A. Monongah Glass Company had one-third interest of Hartford-Fairmont.

Q. They had one-third of 55 per cent when Hartford-Empire was organized?

A. I think that is correct.

Q. It was a substantial interest?

A. Yes.

Q. My associate says approximately 18 per cent?

A. Yes. I think that is about right, Mr. Isseks.

Q. And they had a representative on the Board of Directors, did they not, namely, Mr. Heinzelman?

A. That is correct.

Q. He continued to be a director of Hartford-Empire?

A. Up until——

Q. Some time in '26?

A. Somewhere around there.

Q. Now, is Monongah Glass Company still in existence?

A. No.

[fol. 2147] Q. When did it stop doing business as a glass company?

A. I think it went in the hands of a Receiver about '25 or '26, somewhere around there. It may have been '27.

Q. It may have been later than that?

A. I just do not remember.

Q. What happened to the stock that Monongah Glass Company had in Hartford?

A. The Receiver could not sell the stock, the Hartford-Empire stock, because that stock was issued with a preemption agreement listed on the back. Therefore the Receiver had to offer the stock either to the Empire group or to the Hartford group, or both. I have forgotten just the details. As I remember, the Empire group did not purchase all that stock. Some of the individuals in Hartford purchased some of it, and some of the individuals in the Beechnut Packing Company purchased some of it, and the balance was purchased by what we always called an Ohio group.

Q. A hired group?

A. Ohio group.

Q. Who were the Ohio group?

A. There were Mr. Collins, Mr. Good, I think Mr. Fulton, and there was—I have forgotten as to how many more,—several more people purchased some of that stock. I just can't remember who the ones were.

Q. In that group who was the principal holder of the stock so far as you knew, of the Ohio group?

A. I think Mr. Good and Mr. Fulton and Mr. Collins—[fol. 2148] now, this is all subject to check?

Q. Certainly.

A. Each had about the same number of shares.

Q. With what company was Mr. Collins connected when he first acquired this stock?

A. All of those three gentlemen were connected with the Hocking Glass Company.

Q. Do you remember why those gentlemen were given the opportunity to buy the stock?

A. No, I do not. Empire had declined. Hartford interests had taken some of it. So the rest was subject to sale.

Q. Were they offered to the public generally?

A. That I do not know. I doubt it.

Q. Were they offered to the creditors of Monongah?

A. That I do not know.

Q. Were they offered to the stockholders of Monongah?

A. I do not even know that.

Q. Now at that time you said Mr. Good, Mr. Fulton and Mr. Collins were executives of the Hocking Glass Company?

A. Mr. Collins was an executive. He was president. Mr. Fulton was —. I do not know what position Mr. Good had, whether he was an officer or not.

Q. Now, was the Hocking Glass Company at that time a licensee of your company?

A. Oh, yes.

Q. And had been for some time?

A. Yes.

Q. And has continued to be ever since?

[fol. 2149] A. It is now the Anchor-Hocking.

Q. Did the Hocking Company after that time acquire any interest in any other company?

A. I do not know.

Mr. Wall: Other glass companies?

Q. Glass companies I mean. Did it combine with other companies or merge with other glass companies?

A. Well, they had that General Glass Company.

Q. Which was organized to acquire——?

A. Turner, wasn't it?

Q. At that time wasn't Monongah Company part of Turner?

A. I just do not remember. It may be so. Whatever the record shows.

Q. So far as you know today, Anchor-Hocking consists of the original Hocking Company, does it not?

A. Yes.

Q. And the Turner Company, which went to General Glass?

A. The Turner Company went in the hands of receivership, I have forgotten, what was left of the Monongah Glass Company, and the Turner Glass went in the General. I think they probably did.

Q. Then later on they acquired Capstan Glass?

A. Anchor Cap & Closure.

Q. And Capstan was a licensee of yours?

A. That is correct.

Q. Was Anchor a licensee of yours too?

A. No, just Capstan.

[fol. 2150] Q. Do you remember way back in 1925 having discussions with Mr. Heintzelman and Mr. Cunningham about the desirability of putting together Monongah, Federal, and Capstan?

A. No. I would not deny that I did.

Q. Do you remember as early as 1925 having conversations with Mr. I. J. Collins with regard of putting together Monongah, Federal, Capstan and Hocking?

A. No. But I would not deny that I did.

Q. Maybe I can refresh your recollection. I will show the witness what we have as copies of the diary dated April 2nd, 1925, April 23, 1925, and December 22nd, 1925, and see if they refresh your recollection as to conversations in April of 1925 regarding the possibility of putting together these various companies. Have you looked at the diary entry for April 2nd and April 23rd, 1925?

A. Yes.

Q. Does that refresh your recollection that you had conversations first with Messrs. Heintzelman and Cunningham of Monongah in regard to putting together Monongah, Federal, and Capstan?

A. No. I do not remember that meeting, but I would not be surprised that it is true.

Q. Do you remember in April of '25 having conference with I. J. Collins and Mr. Willetts and Mulholland in regard to putting together Monongah, Federal, Capstan, and Hocking?

A. No. I do not remember that.

Q. Don't you remember there was a statement made at the time by Mr. Collins that he would get—that you would hear further from Mr. Heintzelman?

[fol. 2151] A. I remember this general situation, Mr. Isseks, the Monongah Glass Company were in financial trouble and were operating under great stress. Unquestionably at that time they were looking around to see what could be done, whether they could merge or combine with other companies, and it may have been Federal. It may have been Hocking. It may have been Turner. I just do not remember.

Q. My question is whether you remember talking to Mr. I. J. Collins about that subject matter?

A. Oh, I unquestionably talked to him about it, because whatever was done our license and lease agreement and our machinery was involved, but just when I talked to him or just what I said, I do not remember.

Q. Please look at the entry for April 23, 1925, and see if it does not refresh your recollections as early as that date you were talking to Mr. Collins about the possibility of putting together Monongah, Federal, Capstan and Hocking?

A. Well, they were talking to me about it.

Q. That is what I mean.

A. I could not tell you whether it was April 23rd, but I do know Monongah Glass Company was in financial trouble and I would have said some time in '25.

Q. Fine. In other words, some time in '25 Mr. Collins came to you and talked to you about the possibility of putting together these four companies?

A. That would be my guess, and it is a pure guess. Whenever the Monongah situation became very acute, so that [fol. 2152] receiverships were appointed.

Q. That came later?

A. Or about to be appointed. I think that Mr. Collins may have talked to me about the question of the future of the Monongah Glass Company, whether it could be saved, whether mergers should take place, or what. I think it would have been a very natural thing for Mr. Collins and some other licensee to have done.

The Court: The bailiff may recess court until two o'clock.

(Noon recess.)

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[fol. 2153] The Court: Very well.

Mr. Fuller: Since counsel turned to these matters which is claimed to be related, we believe, to the Anchor-Hocking group of defendants, I have neglected interrupting the interrogation of the witness, on the assumption that the testimony was being received subject to the general objection of irrelevancy, incompetency and immateriality, as made at the beginning of the trial. I would like that understanding confirmed on the record at this point.

The Court: I think there will be no objection.

* * * * * * *

[fol. 2154] Q. Look again at the diary entry for April 23, 1925, and see if that does not refresh your recollection that sometime in 1925 you had a conversation with Mr. I. J. Collins, and with regard to a proposed combination of Monongah, Capstan, Hocking and Federal Glass Companies.

A. I don't deny that I did, but this particular entry does not refresh any particular recollection as to when, or what was said.

Q. You testified this morning you remembered there were conversations at some time with Mr. I. J. Collins with regard to a proposed combination of Hocking and other companies?

A. I think that is true.

Q. You cannot fix the date?

A. No, because they were merely general conversations.

Q. That is all I want to know about—general conversations. Now, with reference to a Mr. Willetts, who is that gentleman, if you know?

A. Well, he is a member of the Hartford organization, in charge of our clay department. He is not now living.

Q. And who was Mr. Mulholland?

A. He is a member of the Hartford organization, one of our engineers.

Q. Mr. Eldred is the gentleman we have talked about?

[fol. 2155] A. That is correct.

Q. Now, do you remember a conversation in December, 1925, with Mr. Heintzelman and Mr. Cunningham, at which they told you they were in difficulties and they would like to sell out their stock at a fixed price?

A. No; I just remember they were in difficulties about that time.

Q. Do you remember their coming to see you about it?

A. They may have, Mr. Isseks, but I don't recollect it.

Q. I direct your attention to the diary entry, and I show you a transcription thereof for December 22, 1925, and see if that refreshes your recollection that Mr. Heintzelman and

Mr. Cunningham came to see you and told you they were interested in selling the Monongah stock at a certain price?

A. No, it does not. I, of course, don't deny it, Mr. Isseks.

Q. Now, Mr. Heintzelman is dead, isn't he?

A. He is.

Q. But Mr. Cunningham is alive?

A. That is correct.

Q. Now, do you remember that sometime in the early part of 1926 you had various conversations with Mr. I. J. Collins with regard to Monongah?

A. I don't doubt that I did, Mr. Isseks, but I couldn't place them as the early part of '26.

Q. See if I can refresh your recollection. I show you a diary entry for February 20, 1926, and I ask you to look at [fol. 2156] that. See if that refreshes your recollection you talked to Mr. Collins sometime in February, 1926, regarding the Monongah situation?

A. No, it does not, any particular meeting, Mr. Isseks. I did talk with Mr. Collins with regard to the Monongah situation.

Q. Did you talk to him about his acquiring a substantial block of stock in Monongah?

A. I suppose at some time I did, Mr. Isseks, because I think he did buy some stock in the Monongah Glass Company.

Q. And hadn't he talked to you about what he was doing?

A. I think Mr. Collins probably took it up with me.

Q. Now, I direct your attention to the diary for May 3, 1926, and see if you remember having a conference in New York on or about that date with Mr. Knox Smith and Mr. I. J. Collins, at which there was discussed the matter of his acquiring more stock of Monongah before arranging for the sale of Monongah's stock interest in Hartford?

A. No, this does not refresh my recollection.

Q. Let me ask you some questions. Do you remember a time came when you learned from Mr. Collins that he had acquired a substantial stock interest in Monongah?

A. I think Mr. Collins probably told me that.

Q. Do you remember about that same time you were discussing with him the sale by Monongah of its stock interest in your company, approximately 18% of the total outstanding stock?

A. No, I don't remember that.

[fol. 2157] Q. You don't mean you don't remember ever talking to him about that subject?

A. Oh, no; I think probably I did.

Q. And the time came when you did talk to him at length?

A. I don't know "at length," the subject would naturally be discussed.

Q. Don't you remember in 1926, after Mr. Collins told you he had control of the common stock of Monongah, you discussed with him the sale by Monongah of its common stock interest in Hartford?

Mr. Fuller: Just a minute, I object, if Your Honor please. The witness hasn't said that Mr. Collins told him that he, Mr. Collins, had control of the Monongah stock.

The Court: You may reframe your question.

Mr. Isseks: I certainly will. I will be glad to.

Q. Don't you remember Mr. Collins told you, as you have already testified, that he had acquired stock in Monongah?

A. I think he probably did.

Q. That is your best recollection?

A. Well, I don't really recollect that conversation.

Q. But you have a hazy recollection?

A. A very hazy recollection, that these matters were discussed.

Q. Now, do you remember that about the time he told you that he acquired the stock interest—and when I say "Mr. Collins" I mean he and his people he was associated with—you understand that, don't you?

A. You mean he and his associates?

[fol. 2158] Q. In the Hocking Company?

A. Yes.

Q. Didn't he discuss with you the contemplated sale of Monongah's stock interest in your company?

A. I would have no—I would not deny that—but as to what he said or when he said it, or just what any conversation was, I cannot recall.

Q. Do you remember generally, you did talk to Mr. Collins about the sale of Monongah's stock interest in Hartford to somebody else?

A. I think I must have, Mr. Isseks.

Q. Does the diary entry of May 25, 1926, refresh your recollection at all in that respect?

A. No, it does not.

Q. Do you remember a time came when Mr. Collins told you that he and his group had control of the stock of Monongah?

A. I don't remember about the control, but when Mr. Collins and associates bought a stock interest in Monongah, there is not any question in my mind but what he told me about it.

Q. Do you remember a time came when you talked with Collins and Heintzelman about the royalty rates to be charged by your company to Monongah, Federal and Capstan?

A. I don't happen to remember it. I would not deny it.

Q. I show you a diary entry for August 8, 1926, and after you read it I am going to ask you two questions. Look at that diary entry.

A. (Witness complies.)

Q. Have you read the entry?

[fol. 2159] A. I have.

Q. Does it refresh your recollection that Mr. Collins would not discuss the sale by Monongah of the stock it owned in Hartford before his group acquired substantially all of the Monongah stock?

A. No, Mr. Isseks, it does not.

Q. Do you remember having discussions in regard to the rates at which your company should charge royalties on pressed ware to Federal, Capstan and Monongah?

A. I remember that subject coming up. I could not remember its coming up at this meeting; but that situation was almost parallel to the situation that we had with the Thatcher Company, because the Monongah Glass Company had certain exclusive rights in our original paddle-needle feeders which did not go over to the Hartford single feeder.

Q. Monongah took the position they were entitled to get it morally, and you said they were not entitled to have it legally?

A. I think that is correct.

Mr. Isseks: I have already asked counsel for Hartford for a copy of the letter from Mr. Knox Smith to the witness dated August 19, 1926, and supposed to be in their files L-1-10, and referred to in the August 19, 1926, entry. If they have it, I would like to have it.

Mr. Wall: There is a letter here. (Producing letter.)

Q. Mr. Smith, who was Mr. Rogers, do you remember?
A. I think there was a Mr. Rogers, I think he was in [fol. 2160] Cleveland, a Mr. Rogers from Cleveland.
Q. Was he connected with Turner Bros. Company?
A. I don't know.

Mr. Isseks: At this time I would like to have marked, letter dated August 19, 1926, from Herbert Knox Smith to the witness, who was then at some place in Maine, Government's Exhibit 268.

Q. Is that Mr. Knox Smith's signature?
A. It is.

Mr. Isseks: I offer it in evidence.
Mr. Fuller: For what purpose, may I inquire? In other words, is it offered as evidence of the truth of what Mr. Collins and Mr. Rogers is reported in that letter to have said to the writer and the writer is now reporting to the witness?
Mr. Isseks: Oh, no; it is offered for the limited purpose that His Honor has heretofore admitted the Knox Smith memorandum.
The Court: It will be admitted for that purpose.
Mr. Fuller: That is over our general objection.

(Said letter of August 19, 1926, read by Mr. Kramer.)

Q. Mr. Smith, do you remember a time came when Mr. Collins came to see you and Mr. Knox Smith, and, of course, discussed the possibility of a combination of Monongah, Turner, and Woodbury?
A. I remember Mr. Collins did discuss these matters with us, but when I couldn't tell you.
[fol. 2161] Q. Do you remember the details?
A. No.
Q. Do you remember that at that very same conference there was an agreement on the part of Collins and you to split the Monongah stock interest in Hartford-Empire by giving him a certain number of shares and your group taking part thereof?
A. No, because the Empire group and the Hartford group had the first right to buy that stock, and what they didn't buy, somebody else must buy.

Q. See if I can refresh your recollection. I show you a diary entry for December 3, 1926. I would like to have you read that, please.

A. (Witness complies.)

Q. Does that refresh your recollection that you discussed with Mr. Collins the problem of arranging for the disposition of the stock which Monongah held in your corporation?

A. No, but unquestionably we did, because the Empire group, as I remember, didn't take any stock, the Hartford group took a block of stock, and what they didn't want, the remaining stock, would be for sale.

Mr. Isseks: Your Honor, at this time I would like to have marked, a memorandum dated December 3, 1926, signed by "Knox Smith." (Same is marked Government Exhibit 269.)

Q. I show you Government Exhibit 269 and ask you whether you identify that signature as that of Mr. Knox Smith?

A. It is.

[fol. 2162] Q. I will ask you to read it, please, and tell us whether the memorandum sets forth what transpired at the conference between you, Knox Smith, Mr. Collins, Mr. Hartley, and Mr. Thompson, on December 3, 1926.

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[fol. 2163] Q. Have you read it yet?

A. No.

Q. You should read it first.

A. (Witness complies.)

Mr. Isseks: It was referred to in a diary entry which I showed him first. I thought he said he remembered the conference.

The Witness: This does not refresh my recollection, but I do not, of course, deny I was at the meeting.

Q. You don't remember anything about the meeting at all?

A. No.

Q. Do you remember attending a meeting at which the subject-matter of the memorandum was discussed?

A. No, I do not.

[fol. 2164] Q. Your recollection is absolutely blank?
A. As regards this subject.

Mr. Isseks: I offer the memorandum in evidence.

The Witness: It says here there was a separate discussion with Mr. Thompson.

Mr. Isseks: I offer the memorandum in evidence as showing the purpose and intent and motive of Hartford-Empire, Mr. Knox Smith, and the other people connected with Hartford.

The Court: Is there any identification?

Mr. Isseks: He testified it is Knox Smith's signature.

The Witness: Yes, that is his signature.

Mr. Isseks: Yes, he testified to that.

The Court: Is there any stipulation as to from whence this came?

Mr. Isseks: It was furnished me this afternoon by Mr. Wall.

Mr. Wall: There has been no stipulation heretofore, but the fact is we found this in the files of Hartford-Empire today, or Saturday—I have forgotten when.

The Court: It may be received for the limited purpose only.

Mr. Haight: I call Your Honor's attention to the fact there is nothing in there, as far as I can see, to show any intent or motive; it is a repetition of things that happened.

[fol. 2165] The Court: It is permitted only to show the state of mind of the writer or the company he is purported to represent at that time.

Mr. Isseks: That is all we ask.

Mr. Fuller: We should like to add to the general objection, the specific ground of failure of the witness to identify the subject-matter of the conference referred to in the memorandum.

Mr. Isseks: The witness has identified the signature of Mr. Knox Smith.

The Court: He has identified the signature.

Mr. Isseks: I would like to have it read.

(Said Government's Exhibit 269 read by Mr. Lewis.)

Q. Mr. Smith, Mr. Hartley at that time was the head of Monongah, was he not?
A. Head of Turner Bros.

Q. Head of Turner Bros., excuse me. Who was the head of Monongah at that time?

A. Mr. Heintzelman.

Q. Now, do you remember having conferences later, some time in 1927, at which it was suggested that the stock that Monongah owned in Hartford should be financed through bankers and sold to the public?

A. I would like to have that question repeated.

(Question read.)

A. No, I do not, Mr. Isseks.

Q. You have no recollection whatsoever on that?

A. No. I know that off and on there were discussions as [fol. 2166] to what was going to become of the balance of the Hartford-Empire stock.

Q. Do you remember Mr. Hartley and Mr. Collins came to see you and Mr. Knox Smith and suggested that the best way for Monongah to raise a lot of capital would be to sell the stock Monongah owned in Hartford at $50.00 a share through bankers?

A. I know that question was taken up with us, Mr. Isseks.

Q. What is your present recollection of what you said in reply?

A. Well, I don't remember just what they said to me or when they said it, but the question as to what should become of that stock Monongah held of the Hartford-Empire Company was discussed at odd times, and it was eventually sold by Monongah. Now, just how it was sold, I don't recollect.

Q. What was Mr. Hartley's interest in Monongah in 1927?

A. Was that before the merger?

Q. That was before General Glass was organized, that is right.

A. I don't remember in detail what it was.

Q. He was a creditor, was he not?

A. That might have been, Mr. Isseks.

Q. I show you a diary entry for April 12, 1927, and see if that does not refresh your recollection as to the subject-matter of the last few questions I have asked you.

A. As regards to this particular meeting, no, it does not refresh my memory. I do know that we—not that we ob-

[fol. 2167] jected, because I don't know that we had any right to object—we didn't want that block of stock to get in the hands of bankers.

Q. Why not?

A. Because we didn't know if they would be friendly to us or what they would do with it, or what demands they would make on us for representation or otherwise.

Q. You were worried, weren't you, that if it got into the hands of bankers it might result in a change of policy with regard to Hartford-Empire, as regards to the glass industry?

A. I wouldn't say that.

Q. See if the diary entry does not refresh your recollection.

A. No. You are asking for my opinion?

Q. I am asking you for your present recollection at that time.

A. That was not a fear of mine.

Q. Was it a fear of Mr. Knox Smith, expressed in your presence?

A. I cannot tell you.

Q. Does the diary entry refresh your recollection?

A. No, it does not, except the question came up some time.

Q. Weren't you worried for fear if there was a diffusion of stock interest in your company it might result in a different policy as far as Hartford was concerned toward the glass industry generally?

A. No, I don't think I ever thought that. I never wanted a banking group.

Q. Let me recapitulate. First of all, you already testi-[fol. 2168] fied between 40 and 45% of the stock was owned by the Empire group?

A. Yes.

Q. About 18% was owned by Monongah?

A. Yes.

Q. How much was owned by the "inside group," so-called?

A. Well, now, let's see——

Mr. Haight: Let's find out what he means by "inside group".

Mr. Isseks: I withdraw the question.

Q. How much was owned by the Beechnut people?

A. About 18%.

Q. That is, 36 and 40 makes around 76 or 77%?

A. Yes, that is right.

Q. And the balance was owned, was it not, by the Hartford group?

A. Yes, somewhere in there.

Q. There wasn't anything held by the public?

A. Not at that time.

Q. Nor at any time did the public own any?

A. Does the public own any now?

Q. Yes, now.

A. Oh, yes, we have five or six hundred stockholders, somewhere between five or six hundred.

Q. Aren't they all connected with the original group?

A. No.

Q. They are not?

A. No.

[fol. 2169] Q. Today between 40 and 45% is owned by Hartford-Empire or its stockholders?

A. Yes.

Q. And 18% is still owned, or more——

A. 18%.

Q. —18% is owned by Beechnut?

A. That is right.

Q. And the Hartford group collectively owns how much, the old Hartford group?

A. Well, I cannot tell you. I don't think it has changed a great deal; it may be a little less or a little more.

Q. How much, about?

A. Well, I just can't tell you.

Q. 25%?

A. I don't think it is as much as that.

Q. And then Mr. Collins' group owns about 10%. or less—how much is it, do you know?

A. No, I don't know.

Q. Going back to this time, at that time there wasn't any public ownership in your company, was there?

A. Outside of these three groups.

Q. There wasn't any?

A. No.

Q. Or four groups?

A. Four groups.

Q. Monongah, Empire, Beechnut, and the so-called Hartford group?

A. Yes.

[fol. 2170] Q. Now, you were anxious to avoid having the stock in the hands of the public because of its effect on your policies?

A. Not at all.

Q. Doesn't the diary entry refresh your recollection?

A. Not my recollection.

Mr. Isseks: I realize Your Honor's ruling in the matter, but I would like to preserve my record, and would like to offer the diary entry, knowing full well Your Honor is going to sustain the objection. I would like at least to preserve my exhibits. I would like to have it marked as the next exhibit-number.

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[fol. 2171] Mr. Haight: Objection is made.

Mr. Middleton: That is the reason I raised that. I wish to make sure there is objection.

The Court: Sustained.

Q. Did I understand you to say you remember there was a conference, or that you don't deny there was a conference on or about April 12, 1927, with Mr. Hartley and Mr. Collins?

A. I just don't remember it. I don't deny it.

Q. You say you don't remember any part of the subject-matter?

A. No.

(Excerpt marked Government's Exhibit 270.)

Mr. Isseks: Your Honor, my associate, Mr. Apsey, has pointed out we have never submitted a memorandum on this diary proposition. The time may come when we may want to have this matter reopened.

Q. Now, Mr. Smith, do you remember that the time came when objection was made on behalf of the Monongah people to prevent the sale of the Monongah interests in Hartford-Empire to the so-called Hartford and Ohio groups?

A. No, I do not.

Q. See if I can refresh your recollection. I show you a [fol. 2172] diary entry of July 13, 1927, diary entry of

Herbert Knox Smith; see if you remember that there was a suit brought to prevent the sale by Monongah of its stock interest in Hartford.

A. Well, I have a very hazy recollection, Mr. Isseks, that there was some talk of a suit, whether it was brought or not I cannot tell you; but, of course, the Monongah Glass Company had bonds outstanding, and whether any suit was brought or not, which I have no recollection of, which had to do with the bondholders rights, I just don't remember.

Q. They tried to stop the sale, didn't they,—in some way?

A. I know there was some question came up, but whether a suit was brought, I don't remember.

Q. And finally they consented, do you remember that?

A. No, I don't even remember that.

Q. See if I can refresh your recollection.

Mr. Isseks: I now offer a document dated October 27, 1927, written by the witness to Mr. Falck. (Marked Government's Exhibit 271.) This copy has been stipulated as genuine by Hartford-Empire Company. I ask the witness to read it and tell us whether he wrote that letter to Mr. Falck.

The Witness (After examining same): Yes, I wrote that letter, Mr. Isseks.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted over objection.

(Said Government Exhibit 271 read by Mr. Kramer.)

[fol. 2173] Q. The gentleman referred to as "Bart" is Mr. Arkell?

A. Mr. Arkell, president of Beechnut Packing Company.

Q. Mr. Arkell at one time was president of your company?

A. He was.

Q. What is his position in your company now?

A. Chairman of our Board.

Q. Also a director?

A. He is.

Mr. Sayles: That is admitted over objection?

The Court: It may be.

Mr. Sayles: We move to strike it out. I wasn't following it, I just wanted it offered over objection. I didn't give thought when it went in. I suppose I should move to strike it out.

The Court: The motion to strike will be overruled; your exception may be noted.

Q. Do you remember that a time came when there was an arrangement made between the Empire people, the Hartford group, so-called, and Mr. Collins, with regard to the divisions of the shares of stock held by Monongah in Hartford, as to who should get how much?

A. No.

Q. Don't you remember there was such an arrangement made first, and then later on they would send out the necessary papers to the various people?

A. No, I don't know what you are referring to, Mr. Isseks.

Q. See if I can refresh your recollection. I show you the diary entry for November 2, 1927. I see my people have [fol. 2174] copied it exactly. There was a blank space on that they couldn't read. I see they have copied it. See if that entry does not refresh your recollection.

[fol. 2175] A. Mr. Isseks, I think that was stock with the preemption agreement on the back. Both the Empire group and the Hartford group waived their rights; and I think any stock that went to Mr. Collins or to any individual member of the Hartford group, that that preemption agreement was no longer on the stock; and some time an understanding had to be arrived at as to who was going to purchase the shares of that stock. What the understanding was, or just how many—the number of shares each person was going to take, I cannot tell you.

Q. I am asking you about a specific conference. Do you remember the conference in New York the latter part of November, 1927, more specifically, November 2, at which were present Messrs. Arkell, yourself, Knox Smith, Hartley, I. J. Collins, Thompson and his assistant, at which there was an agreement arrived at regarding the disposition of the Monongah stock interest of Hartford-Empire?

A. I do not happen to remember the meeting, but I do not deny it.

Q. No recollection whatsoever?

A. I remember this question came up, but I do not remember this particular meeting.

Mr. Isseks: Your Honor, I have asked counsel to produce the memorandum of November 3, 1927, apparently by Mr. Knox Smith. They tell me they have been unable to find it.

Mr. Wall: That is correct.

[fol. 2176] Mr. Isseks: Your Honor, at this time I should like to offer the entries for November 2 and November 3, with the understanding as to what Your Honor's ruling is in the matter.

Mr. Haight: We object, Your Honor.

The Court: The objection will be sustained.

Q. Do you remember a time came some time in November where an underwriting agreement was made with regard to the stock, and a certain amount of shares were subscribed by the Ohio group, and a certain amount by the so-called Hartford-Empire and the other groups?

A. I don't remember any underwriting agreement. I remember individuals and Hartford bought some of the stock, and Mr. Collins and his associates bought some of the stock.

Q. See if I can refresh your recollection. I show you a diary entry of November 7, 1927, and ask you whether that refreshes your recollection? Does that November 7, 1927, diary entry refresh your recollection that there was an underwriting, in which Mr. Collins, on behalf of himself and group, bought 1,050; and you and Mr. Arkell and one H. S. M. and Mr. Knox Smith agreed to take 5,036 shares?

A. No, it does not.

Q. Who is H. S. M.?

A. Hartford Special Machinery.

Q. That is this company which had no connection with your company other than to make machinery for you?

A. That is all. We owned no stock of theirs.

Q. But they own stock in your company?

[fols. 2177-2179] A. That is correct.

Q. Do you remember that there was an underwriting agreement?

A. No, I do not. There might have been some agreement for the benefit of the bondholders; I just don't recollect, Mr. Isseks.

Mr. Isseks: Your Honor, I will appreciate it if counsel for Hartford and counsel for Mr. I. J. Collins would furnish us with a copy of any such agreement, if it ever existed—I don't know whether it did or not, or whether it still exists.

The Court: If they are able to locate it, it may be furnished.

Mr. Isseks: With full appreciation of Your Honor's ruling in the matter, I should like to offer only the diary entry of November 7, and not the others on this page. I am physically striking them out.

Mr. Haight: I make the same objection, if Your Honor please.

The Court: The objection will be sustained.

* * * * * * *

[fol. 2180] Q. Mr. Smith, you remember a time came when there was a closing in connection with the Monongah stock interest in Hartford? A time came when that stock was transferred?

A. That is correct.

Q. You cannot fix the date offhand?

A. No, I cannot.

Q. See if I can refresh your recollection. I show you a diary entry of February 10, 1928—that is the only one I want you to look at—and see if it refreshes your recollection that some time in the early part of 1928 the matter was closed and the stock was distributed, a certain number of shares going to the Ohio group, as you defined them; and the other shares going to the Hartford group?

A. What is your question?

Q. I am trying to fix the date; that is all.

A. I would have no way of knowing.

[fols. 2181-2182] Mr. Isseks: Your Honor, just before recess I asked Mr. Wall if, some time between now and tomorrow, he would see if they have the memorandum of February 14th, 1928, which might help us in connection with the closing. It is supposed to be in the file marked M-4-1, of Herbert Knox Smith.

Q. Mr. Smith, do you remember that you had a conference at that time, in 1928, with Mr. I. J. Collins, Mr. Hartley, and Mr. Arkell, with regard to the difficulties that were being had in connection with the price of glassware?

A. No, I don't remember any particular conference about it.

Q. Do you remember you were told some time prior thereto that there was a committee of seven members of the Glass Container Association who were trying to work out something with respect to prices?

A. No, sir.

Q. See if I can refresh your recollection. I show you a diary entry for April 11, 1928, and see if that helps your recollection.

(Witness reads document.)

A. I do not happen to remember this meeting, Mr. Isseks.

* * * * * * *

[fol. 2183] Q. Do you not remember talking to Mr. I. J. Collins and Mr. Arkell and Mr. Hartley, in New York, about the prices of glassware?

A. I would not say I did not.

Q. Do you remember talking to them about that subject in the Biltmore Hotel, New York?

[fol. 2184] A. No, sir.

Q. Do you remember talking about the fact of the committee of seven of the Glass Container Association were getting nowhere?

Mr. Haight: That is the same thing I objected to.

Mr. Isseks: I am not reading the diary entry.

Mr. Haight: You are asking him all of those questions.

Mr. Day: I want to join in the objection on behalf of the Glass Container Association.

The Court: I think, if you put the general question to him, and if he says he does not remember, that will be sufficient. I think you should show him the diary entry, let him examine it, and then ask him if he remembers the meeting at that time and place, at which certain matters were discussed. If you desire, you may go so far as to say with reference to prices. I do not think that would be objectionable. I do not think you ought to persist in a detailed examination of the witness, or referring to items that are set forth in the diary.

Mr. Isseks: Your Honor has in mind, I assume, Rule 43-b of the Rules of Civil Procedure, which provides:

"A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been [fol. 2185] called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief."

The Court: That is the rule you have been operating under with this witness from the beginning.

Mr. Isseks: That is right, Your Honor. It seems to me I may interrogate him about any meeting at which he was present.

The Court: What I am trying to get at is this: Counsel should avoid by technical questions that are based upon the diary entries, getting into the record the contents of the diary which the Court has excluded.

Mr. Isseks: My statement and question can never be testimony. If the witness says after I ask him a question that he does not recall, that does not make my question testimony.

The Court: I understand that; but I do not believe that you should minutely examine this witness as to the contents of diary entries which the Court has refused. As I say, you may put the general question to him.

Q. Do you remember at this conference you said you took the matter up with Mr. Boshart?

Mr. Haight: Objection to the question. The witness has never said he remembered any conference at the Biltmore [fol. 2186] Hotel or with either of those gentlemen, or on the date specified, or anything else. That is, I think, going contrary to what Your Honor has directed.

Mr. Isseks: My recollection of his testimony is that he remembers there was a conference, but did not remember the details.

The Court: No, I do not think he said he even remembered the conference; he said he had no remembrance of the conference at a certain hotel, I think the Biltmore Hotel.

Mr. Isseks: I think I asked him the general question whether he ever talked to these gentlemen about prices.

The Court: You asked him that question.

Mr. Isseks: What was his answer?
The Court: The answer was no.

Q. You do not remember talking to these gentlemen about prices, ever?

The Witness: Did I say I never talked?

(Previous question and answer of witness read.)

Q. Directing your attention to that question and answer, do you remember telling these gentlemen, Messrs. I. J. Collins or Hartley that you would take the matter of prices up with Mr. Boshart?
A. No, I don't remember that, Mr. Isseks.
Q. I direct your attention to the next diary entry, a piece of paper in front of you: May 28th, 1928, more than a month after the earlier one, and ask you whether it does [fol. 2187] not refresh your recollection that you did talk to Mr. Boshart?
A. No. I would not deny, Mr. Isseks, that I did not talk to Mr. Boshart—or rather, that I did.

* * * * * * *

Mr. Isseks: At this time, Your Honor, I offer the April 11, 1928, diary entry, and the May 28, 1928, diary entry, with full realization of Your Honor's ruling in the matter.
[fol. 2188] Mr. Day: If Your Honor please, our objection on behalf of the Glass Container Association.
Mr. Haight: We object, Your Honor.
The Court: What is the number of the exhibit?
The Clerk: Government's Exhibit 274.
The Court: The objection will be sustained.

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Mr. Day: Do I understand that that is admitted only for the purpose of showing the intent of the writer on the parties to the document, under the limited ruling that Your Honor made?
The Court: Yes, that was the ruling at the time of the admission of this Exhibit No. 261.
Mr. Isseks: Your Honor, at this time I should like to [fol. 2189] have marked as the next exhibit, a document of five pages, which is headed at the top: "Conferences

Thatcher and Hocking Companies, February 10 and 11, 1931", and purports to be signed by Mr. Knox Smith.

The Clerk: Government's Exhibit No. 275.

[fol. 2190] (4 p.m. March 17, 1941.)

Q. Mr. Smith, I show you Government's Exhibit 275 and ask you whether that is Mr. Knox Smith's signature?

A. It is.

Q. I will ask you to read the exhibit to see if it refreshes your recollection of conferences you attended on February 10th and 11th, 1931?

A. I have read it, Mr. Isseks.

Q. The question is whether you remember the conferences?

A. I remember there was such a meeting. There are a number of things in this report of Mr. Knox Smith's that I don't remember. Some of them I do.

Q. Tell us those that you do remember.

A. Well, I remember that the question of Hocking's forming a company with Thatcher to take over the Turner and Monongah interests was discussed. I remember that they wanted a pretty broad license. I remember the question of whether they should be given as broad a license on pressed ware as Monongah had was discussed, taken up. I had forgotten that Mr. Arkell, or either of the Arkells, were there, but I do not doubt it, because I think they naturally would be very interested in finding out what was going to happen to the Monongah, because Monongah had been making all their beechnut jars. I don't remember anything about the discussion of the merger of Hocking Glass and the Thatcher Glass. I do remember that on this new company which was to be formed to take over Turner and Monongah, that it was suggested that some one of us sit [fol. 2191] on that Board. It was suggested that I sit on the Board and I declined. I think that is about all, Mr. Isseks.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

Q. Now, Mr. Smith, did you learn later that Turner and Monongah were taken over by a corporation called General Glass Corporation, organized by Thatcher and Hocking?

[fol. 2192] A. I think that is correct.

Q. Somebody told you that?

A. Yes.

Q. Either Mr. Collins or Mr. Mandeville?

A. It became generally known in the trade. I could not tell you which one.

Q. And they each owned half of the stock?

A. So I understand.

Q. Mr. I. J. Collins became president of General?

A. I would not know.

Q. We have a letter in evidence that at least you wrote him as president?

A. Well, perhaps he was then.

Q. Sometime after February 10, 1931, you said you remembered that conference in New York?

A. Part of it.

Q. You remember the conference? I am not talking about details. You remember the conference?

A. Yes.

Q. Do you remember there was some excitement on behalf of the people at Fairmont, W. Va., where Monongah was located; they took the position that the plant was being improperly closed?

A. No. I remember people coming up to Hartford once, wanting to know if there couldn't be something done to operate the plant again, but I don't happen to remember the excitement which you refer to.

Q. Do you remember that you were told by somebody [fol. 2193] that your company, the General, Hocking, Thatcher and Owens, were going to be charged with a conspiracy to close the plant down?

A. No. I don't happen to remember that.

Q. Do you remember taking steps to hire a lawyer in Fairmont, W. Va., to protect your interests in case such a suit was brought?

A. I do remember now, Mr. Isseks. That refreshes my memory. I do not remember that a suit was to be brought and I don't remember what kind of a suit it was, but I do remember that we hired a lawyer in Fairmont, W. Va.

Q. To protect your interests?

A. I think so, if we were a party to it. I had forgotten that we were a party to it.

Q. Do you remember talking to Mr. Carter about that whole subject-matter?

A. No.

Mr. Isseks: At this time I would like to have marked as the next Government's Exhibit, a copy of memorandum dated May 26, 1931, from Henry W. Carter, vice-president, to William E. Levis, president and general manager. Carbon copy to Mr. Phillips; entitled "Talked with Goodwin Smith about Monongah". Your Honor, I offer this document in evidence as Exhibit 276. Perhaps I better ask the witness one question before I offer it.

Q. Will you read the memorandum and see if it refreshes your recollection of a conversation you had with Mr. Carter shortly prior to the date of the memorandum?
[fol. 2194] A. (Witness looks at exhibit.) Have you got a better copy, Mr. Isseks?

Q. I am very sorry. That is a poor photostatic copy. Here, use my copy. (Handing another copy of Exhibit 276 to the witness.)

A. (Witness reads.) All right, Mr. Isseks.

Q. Have you read it, sir?

A. Yes.

Q. Does that refresh your recollection that you had the conference referred to therein with Mr. Carter, in New York, about the date that he mentioned, namely Wednesday and Thursday, of May 13th and 14th, 1931?

A. No.

Q. Do you remember the subject-matter of the conversation?

A. No. I do not deny we had such a conference. I don't happen to remember.

Q. Do you remember the telephone conversation which he refers of having taken place the morning of the day he wrote the memorandum?

A. No.

Q. I direct your attention to the second page of the memorandum.

A. No, I do not remember it.

Mr. Isseks: I offer the document in evidence. It is stipulated by Owens as coming from its files. I offer the document in evidence for two purposes: One, as to the truth of what Mr. Carter says about his own company if he says [fol. 2195] anything—I don't remember—and secondly, as to the truth of what he says transpired between himself and the witness. The witness has no recollection. He doesn't remember what has taken place and this is offered in contradiction as to what he said and as to what other people said, I offer it for the purpose of other documents showing the purposes and motive.

* * * * * * *

Q. Do you know how it got in the files of Hartford?
A. I don't know.
[fol. 2196] Q. Did they send you a copy of it?
A. I would not remember.
Q. You do not deny you got a copy?
A. No.

* * * * * * *

The Court: I will admit it for the purpose of establishing the state of mind of Henry W. Carter and the company which he represented. It is an inter-office communication, I presume. How it has gotten in the files of Hartford I would not know.

Mr. Isseks: It is stipulated it was in their files.

The Court: I will admit it for that purpose only.

Mr. Isseks: I would like to ask counsel for Owens to produce the original of the memorandum.

Mr. Fuller: For Anchor-Hocking and Mr. Collins and [fol. 2197] the Anchor-Hocking group of defendants, I wish to make a general objection that the document is incompetent, irrelevant and immaterial, and add to that the ground of hearsay and on the ground of genuineness of the document being a copy.

The Court: You understand if this document says anything about the Hocking Company, it is not offered for the purpose of proving the truth of that statement.

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[fol. 2198] (At 10 a. m., Tuesday, March 18, 1941, the trial was resumed.)

Mr. Isseks: I would like to have read Government Exhibit 276, which Your Honor admitted yesterday.

(Said Exhibit 276 read by Mr. McCracken.)

Q. You heard the letter read, did you not?
A. I did.

Q. You read it yesterday, too?

A. Yes.

Q. You remember the conversations with Mr. Carter that are referred to in that letter?

A. No, I don't, but I don't deny them.

Q. Have you no recollection whatsoever?

A. No.

Q. Now, Mr. Smith, yesterday when I examined you, apparently there was either a stenographer's misunderstanding or you misunderstood my question,—at page 914 there is an indication by your answer that Lynch was manufacturing gob feeders. That is not true, is it?

A. No.

Q. As far as you know Lynch has never manufactured gob feeders?

Q. Or any kind of feeder?

A. Not that I know of.

Q. Now, I would like to go back to this Knox-O'Neill situation for a few minutes. Do you remember in the fall of 1931 having a conference with Mr. Carter and his assistant, Mr. Naylor?

[fol. 2199] A. No.

Q. Do you remember ever having a conference with them at any time,—those two gentlemen,—with regard to the suggestion that O'Neill sue Lynch?

Mr. Middleton: May I ask with whom those conferences were? I didn't catch the question.

Mr. Isseks: Carter and Naylor.

A. No, I don't; but I would not deny it.

Q. Do you remember having a conference with those gentlemen at some time at which you told them that before your company would participate in the purchase of the assets and patents of Mr. O'Neill's company, you would like to have certain information given to you?

A. No, I don't happen to remember such a conference.

Q. Do you remember having a discussion in the fall of 1931 with Mr. Carter and Mr. Naylor, at which time it was stated that the approximate purchase price of the O'Neill business and patents would be about $700,000.00.

A. Oh, no, I do not.

Q. Do you remember that the final purchase price to both parties was about $600,000.00?

A. No; I remember what we paid. I don't happen to remember what the Owens paid.

Q. Do you remember having a talk in the fall of 1931 with Messrs. Carter and Naylor at which the suggestion was made your company would pay half the price if the purchase was made?

A. No, I do not.

[fol. 2200] Q. Now, you are stating you didn't know anything about the purchase by Owens of the O'Neill business?

A. At what time?

Q. When it was finally made?

A. Oh, I think I knew they were going to take up some suction rights, but what the negotiations were or the final deal between Owens and O'Neill, I don't happen to remember.

Q. Didn't you talk to Mr. Levis about it?

A. I would not deny I did, Mr. Isseks; I don't remember.

Q. How much did you actually pay for these so-called rights, feeder rights, of the O'Neill Company?

A. We gave Mr. O'Neill the annuity, which I think was worth some $80,000.00.

Q. You had the option to pay $100,000.00 by notes, or give an annuity?

A. That is correct.

Q. He took the annuity?

A. He did.

Q. Is that all you paid?

A. That is all I remember.

Q. Did you pay anything to Owens?

A. Not that I remember.

Q. Are you sure about that?

A. From memory, I am quite sure.

Q. You would know if anybody would know, wouldn't you?

A. I ought to.

Q. Well, see if I can refresh your recollection a little [fol. 2201] bit. I want to show you first a book that was given us yesterday by your counsel, and ask you a few questions about the book. Now, there is a diary entry runs about five pages, of November 11th. I am going to show you that and I want you to identify the handwriting.

A. It is Herbert Knox Smith's.

Q. There is not any question?
A. No.

* * * * * * *

Q. To save your eyesight, I hand you an excerpt of the diary entry of November 11th. They have copied the whole thing. The first and third items I am not interested in.

The Court: What item is it?
Mr. Isseks: Item 2. There are three items,—one, two, three; the second one is the only one I am interested in. [fol. 2202] It has subdivisions "a", "b", "c" and "d", then more subdivisions. I want to see if I can refresh the witness' recollection.

A. (After witness examines exhibit.) I don't remember this conference, Mr. Isseks. I would not deny it.
Q. We are not back in 1920, we are in 1931, you know. You have no recollection whatsoever?
A. No.
Q. Absolutely blank?

Mr. Haight: The question that was put to the witness that was last answered related to the final closing, which was in 1933. He is now trying to refresh the witness' recollection, apparently, as to that time, by a memorandum made by someone else in 1931, when the negotiations were in progress.
Mr. Isseks: I will re-phrase my question. I am not trying to fool the witness.
Mr. Haight: I don't think you were.
Mr. Isseks: I am sorry there has been a misunderstanding.

Q. You look at that memorandum dated November 11, 1931, Armistice Day, and see if you recall a conference on Armistice Day in 1931 at which were present Mr. Henry Carter, Mr. Naylor, and yourself, and Mr. Knox Smith.
A. No, Mr. Isseks, I don't recall it. I would not deny it, but I have no recollection of it.
Q. Your memory is absolutely blank?
A. As far as any particular conference at a particular [fol. 2203] day, and as stated here, yes.
Q. I will ask you another question, so we don't misunderstand each other. Forget the particular date; forget the

particular conference; put yourself behind the closing, about a year and a half or a little over a year—do you remember any conference with Mr. Carter, Mr. Naylor, Mr. Knox Smith, at which the subject-matter of the diary entry was discussed by you?

A. No, I remember no conference with those gentlemen.

Q. That is all I want to know. Your mind is absolutely blank?

A. Absolutely, as far as the details of any conference. I do not deny that some of those questions were discussed at times.

Q. Now, your memory is a little refreshed, then. You want to take it back, then? (Handing the witness exhibit again.) I think you said at the end you do not deny some of the subject-matters were discussed at that time. You take it and tell us which subject-matters were discussed. You say you don't deny—you mean that brings back some recollection?

A. No, it brings back no recollection.

Q. Your mind is still a blank?

A. Yes.

Mr. Isseks: I offer that in evidence as a memorandum written by Herbert Knox Smith in the regular course of business. I understand Your Honor's ruling the objection will be sustained?

[fol. 2204] The Court: Objection will be sustained.

Mr. Haight: Objection is made. I take it these are marked under the rule.

* * * * * * *

[fol. 2205] Q. Now, Mr. Smith, do you remember yesterday I showed you some papers, or, rather, you heard me offer in evidence, an assignment dated May 5, 1933, from Knox-O'Neill Company to your company, in which you agreed to pay $100,000.00 in one or two forms; remember that? It was dated May 5, 1933.

A. Will you say that again?

Q. Remember yesterday I offered in evidence an assignment from the O'Neill Company to your company which was dated May 5, 1933?

A. Yes, that was when we purchased the patents on the gob feeder and some forming-machine patents.

Q. Did you notice next day, May 6th, there was a final [fol. 2206] contract between O'Neill and Owens in which they agreed to pay some consideration which aggregated around half a million dollars, half of it in cash and some bonds, and some other consideration coming to the figure of $500,000.00?

A. I think that is correct.

Q. Don't you remember that you knew all about those transactions before they took place, and discussed those matters with Mr. Levis and Mr. C. B. Belknap?

A. Well, as I remember the situation, Mr. O'Neill wanted to sell out his business, and offered to sell us his gob-feeder patents and some forming-machine patents, and I knew at that time that he was selling to the Owens Company, whatever it was, rights in a suction machine, or other patents; just what the details were, I never knew.

Q. Don't you remember that Mr. Levis said, "We have got this contract"—which is in evidence here—"the option to buy this for $600,000.00. We want you to share, contribute, toward the purchase price."?

A. No, I don't remember that, Mr. Isseks. We did know that Owens were going to buy the O'Neill suction rights.

Q. Will you deny that Mr. Levis or Mr. Belknap informed you, and said, "We have got this option; we want you to contribute toward the purchase price"?

A. I don't remember, but I do not deny it.

Q. And don't you remember you said to Mr. Levis, "We cannot do that. We are willing to contribute but it cannot appear that we are contributing"?

A. I don't remember it.

[fol. 2207] Q. Don't you remember you said, "We have got to do it in a way that O'Neill sells us certain feeder rights, and in a way to take the suction rights over"?

A. No, I don't remember.

Q. Do you deny that?

A. I would not deny it but I have no recollection of it.

Q. Are you sure you only paid $100,000.00 in the contribution toward the $600,000.00 amount?

A. To the best of my recollection.

Mr. Isseks: At this time I would like to have marked, document we located last night, and which we told counsel about last night, dated May 6, 1933, from R. D. Brown to the witness, an inter-office memorandum.

(Marked Government Exhibit 278.)

Q. Do you identify Mr. Brown's signature on this memorandum dated May 6, 1933?
A. Yes, that is Mr. Brown's signature.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted over objection.

(Said Government Exhibit 278 read by Mr. Kramer.)

Q. You heard that read, did you not?
A. I did.
Q. Does that refresh your recollection that you had a talk with Mr. Belknap or Mr. Lewis with regard to the manner in which your contribution should be made for the O'Neill purchase?
A. It does not.
Q. The memorandum, you will notice, is dated the same [fol. 2208] day that O'Neill was purchased by Owens?
A. It does not refresh my recollection.
Q. It is dated the day after you agreed to sign the contract by which you paid either $100,000.00 in notes or an annuity to Mr. O'Neill. But it does not refresh your recollection?
A. It does not.
Q. Your recollection is absolutely blank?
A. Yes, so far as that memorandum goes.
Q. You have no recollection whatsoever of talking to Mr. Levis?
A. I have no recollection of talking to Mr. Levis. I would not deny that I did.
Q. Or to Mr. C. B. Belknap?
A. No. I would not deny that either.
Q. But you have no recollection whatsoever?
A. None whatever.

Mr. Isseks: At this time, Your Honor, for completeness, I would like to have marked a telegram from the witness to Mr. Carter. The copy we have has no year, only has "December 9," but I am advised by counsel the correct date of their copy is 1930. We have the Owens' copy; they have their office copy; and we take their statement as completely accurate, that it is 1930.

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[fol. 2209] Mr. Isseks: It is offered for what Mr. Brown says, as to truth.

Mr. Fess: For what Mr. Brown says, but not what somebody else says.

Mr. Isseks: That is right.

• • • • • • •

Q. Who handled for your company, the details in the closing of the Knox-O'Neill transaction?

[fol. 2210] A. I think members of our patent counsel.

Q. Do you remember who?

A. No, I don't remember who.

Q. I will help you out. It has been suggested by Judge Haight it was Col. Brown; does that refresh your recollection?

A. No, but I don't doubt it.

Q. Even on who handled the deal, your memory is an absolute blank?

Mr. Haight: No; he said somebody in his patent department. There are two or three men in the patent department.

Q. You don't remember who?

A. No, I do not.

Q. You have no reason to doubt Col. Brown handled it—I am trying to help you but I don't have any success. I show you photostat of telegram purporting to be sent by you to Mr. Carter. I will ask you whether you remember sending the telegram in the latter part of 1930?

A. No, I don't remember it. I don't deny it.

Q. Look at that handwriting on the photostat and see if you can identify the handwriting, based on your experience.

A. Well, that looks something like Mr. Henry Carter's handwriting, but I am not dead-sure.

Mr. Isseks: I offer that in evidence, handwriting and all.

The Court: I didn't catch what he said about the handwriting.

The Witness: It looks something like Henry Carter's [fol. 2211] but I couldn't be sure.

Mr. Isseks: I offer that in evidence, handwriting and all.

The Court: It may be admitted over objection.

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[fol. 2212] Mr. Isseks: This telegram is from the witness to Mr. Carter, dated December 9, and reads: "Are you coming Hartford this week or next for conference regarding O'Neill proposition? F. Goodwin Smith." In handwriting is: "W. E. L. and self responded to this by telephone—3-party talk—with F. G. S.—and said W. E. L. would talk with Belknap in N. Y. tomorrow, December 10, and arrange to have B. meet Parmelee, Wilson—O'Neill agrees to this—H. W. C.".

Q. I am going back to the Anchor-Hocking transaction for a short period of time. I would like to have you identify copy of the letter that you are purported to have written Mr. Arkell on September 1, 1927. I show you Government's Exhibit 280, Mr. Smith, dated September 1, 1927, purporting to have been written by you to Mr. Arkell, and ask you whether you wrote that letter.

A. I don't doubt that I did; I just don't remember.

Mr. Isseks: I believe it has been stipulated it is a genuine [fol. 2213] document from the files of Hartford. I offer it in evidence.*

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 280 read by Mr. Lewis.)

Q. Now, Mr. Smith, reference was made in your letter, Government's Exhibit 280, to opalware. What is opalware?

A. Opalware?

Q. Do you know?

A. It is opalware.

Q. Is that all you can tell us about it?

A. It is white-colored glass.

Q. That is a little different than "opalware," that helps us a little bit. Who was manufacturing opalware back in 1927 in this country?

A. Hazel-Atlas Glass Company were; I think there were a lot of other concerns that were making it by hand. I can't tell you.

Q. Hazel was the largest manufacturer of opalware in this country?

A. I think so.

Q. Yesterday, at page 930 of the record, you gave an answer in the middle of the page which says that you remembered the subject of rates at which your company should charge royalties on pressed ware to Federal, Capstan and Monongah, but you didn't remember the particular conversation?

A. No, I don't remember.

Q. You do remember the subject?

A. Well, in one of those letters read yesterday there was [fol. 2214] a discussion about rates, as I remember it, on the old paddle feeder, and the new company was to pay standard rates on the Hartford single feeder.

Q. Now, Monongah had one of the first licenses from your people, did it not?

A. That is right.

Q. And it was given an exclusive right, was it not?

A. For pressed ware.

Q. On certain types of machinery?

A. On the original paddle feeder, I think it was also the original press which they held exclusive rights on.

Q. Later on, when you developed the Hartford single feeder, Monongah wanted exclusive rights again, didn't they?

A. That is correct.

Q. What did you say about it?

A. No.

Q. Who else was given any rights in connection with Hartford single feeder for pressed ware?

A. Oh, eventually several people were.

Q. Who?

A. Well, I think Turner had some rights; Hocking had some rights.

Q. Capstan?

A. Capstan, yes, I think they had some rights.

Q. Federal?

A. Well, I am not sure. The record would show.

Q. We are talking about pressed ware. What is pressed ware, in ordinary parlance?

[fol. 2215] A. Well, I don't know that I can technically describe it, but I will try. A slug of glass, or gob of glass, is dropped into a mold, and the plunger comes down and presses the article into shape; there is no blowing operation to it.

Q. Anything else you want to say?

A. No.

Q. Am I correct in my understanding that the ordinary glass tumbler, like you have in front of you, is made under the pressed-ware classification?

A. No, that might be made under press and blown.

Q. But either pressed or pressed and blown?

A. I am not sure whether a light tumbler like that could be pressed. I wouldn't know; it might.

Q. Who, in 1927, were the principal manufacturers of, let's say, glass tumblers? Hocking?

A. I think there was Hazel. Hocking was—I don't know whether at that time they had it, or had what they called the hot-mold tumbler, which wasn't a pressed tumbler; and Capstan made some pressed ware.

Q. Monongah?

A. Oh, yes, Monongah always made pressed ware.

Q. Federal?

A. And I think Federal did.

Q. Anybody else?

A. I just wouldn't know.

Q. Do you remember back in 1930, the early part of 1930, Turner was indebted to your company for back royalties?

A. Well, I know that Turner owed us a great deal of [fol. 2216] money, whether it was 1930 or the beginning of '31 I am not quite sure, but right around that period.

Q. And you took notes?

A. That is correct.

Q. And Monongah was in the same position?

A. Yes.

Q. They owed you money, and you took notes?

A. Monongah owed us quite a lot of money.

Q. Do you remember talking with Mr. I. J. Collins?
to putting Turner in receivership?

A. Yes.

Q. Do you remember there were discussions with regard to reorganizing Turner?

A. Yes.

Q. Who did you have them with?

A. Well, I cannot tell you just who: it was a general topic, I suppose I took it up with quite a few people.

Q. Do you remember talking with Mr. I. J. Collins?

A. I think unquestionably I talked to him about it.

Q. Do you remember the question came up of your company and I. J. Collins trying to get control of the reorganized Turner Company?

A. No, I don't remember that.

Q. Do you remember having any conversations to that effect?

A. I might have.

Q. What is your best recollection?

A. Well, I haven't any detailed recollection of it. It was a rather serious situation, because of the depression going on, and here were two companies that had not been [fol. 2217] able to make a success and they owed us a lot of money, both Turner and Monongah, and undoubtedly some question of rehabilitation or refinancing came up and was discussed not once but probably a number of times.

Q. Do you remember a specific conversation with Mr. Collins and Mr. Knox Smith with regard to your company going in for about $50,000.00 of the reorganized company if control could be obtained by your collective group, as long as there was no receivership?

A. No, I don't. I don't deny it.

Q. See if I can refresh your recollection.

Mr. Wall, do you want to look at the diary entry for August 21, 1930? It will save the necessity of showing the witness the diary entry for the purpose of identifying the handwriting.

Q. Will you look at the diary entry of August 21, 1930? —I am showing you an excerpt—and see if that will refresh your recollection.

There is no dispute about the handwriting, is there?

Mr. Goodrich: No.

Mr. Haight: If we don't dispute it, it is understood we don't.

Mr. Isseks: I am sorry, misunderstood it.

Q. Does that refresh your recollection?

A. No,—I would not deny it,—it does not refresh my recollection, Mr. Isseks.

Mr. Isseks: I would like to have the exhibit marked, with [fol. 2218] the understanding Your Honor will sustain an objection, the excerpt for August 21, 1930. (Marked Government's Exhibit 281.)

I understand the practice is going to be, if they make objection Your Honor sustains it.

Mr. Middleton: There is objection.

The Court: It will be understood there is an objection to each of these items.

Q. Now, Mr. Smith, do you remember that the time came when you had the problem of whether or not Turner and Monongah could continue to have their pressed ware rights because of their financial condition?

A. Well, I don't remember that specifically but evidently that became an important question. The discussions were had, and went into a lot of details at that time. Perhaps I don't understand your question.

Q. Do you remember you went to Indianapolis in the fall of 1930?

A. I went out to Indianapolis at the time of the receivership, yes.

Q. Was it before the receivership or afterwards?

A. I haven't any idea.

Q. You went out and talked to Mr. Hartley, who was the head of the company?

A. Yes, I did.

Q. Who else was there?

A. I haven't any idea.

Q. Mr. Walker there?

[fol. 2219] A. I don't remember.

Q. You know Mr. Walker, don't you?

A. Yes, he was, I think, an officer of Turner Bros.

Q. He was in charge of the Monongah plant, wasn't he?

A. I think so, yes.

Q. Do you remember before you went out there Mr. Knox Smith said to you, "I have just had a telephone call from Carter and Carter said, 'Don't distribute those tumbler rights until Owens gets a chance at them' "?

A. I have no such recollection.

Q. Don't remember it at all?

A. No.

Q. You did go out there?

A. To Indianapolis?

Q. Yes.

A. Yes.

Q. Did you talk about what was going to happen to their tumbler rights?

A. I probably did, but I don't remember.

Q. No recollection at all of what happened?

A. No.

Q. Your mind is absolutely blank as to what happened when you got out there?

A. In Indianapolis?

A. Yes.

A. I cannot remember the details at all. I went out there and we discussed, naturally, this financial situation, what was going to happen to the company, whether they could [fol. 2220] be rehabilitated, but just what I said, or the details of any conversations, I do not remember.

Q. I didn't ask you for any details. I want your best recollection, particularly as to what was said with regard to the rights that Monongah and Turner had insofar as they related to pressed ware.

A. I haven't any idea. I won't deny the subject was discussed, but what was said I have no recollection of.

Q. To clear the record up, Turner by that time controlled Monongah through a stock interest, did it not?

A. I think so.

Q. By 1930?

A. What is the date?

Q. This is the fall of 1930.

A. I think so.

Q. Mr. Collins and his group had somehow or other,—we don't know the details,—transferred their stock interest in Monongah to Turner, and Turner controlled Monongah?

A. I think that is so, but I wouldn't want to say definitely.

Q. Subject to correction, I want your understanding of the situation.

A. I think that was so.

Q. At this time, I would like to show you diary entries for October 23 and October 27, 1930, and see if they refresh your recollection of the talk you had with Mr. Knox Smith as to what Mr. Carter told him.

A. (After examining same.) No, it does not.

Mr. Isseks: I offer the two diary entries in evi- [fol. 2221] dence.

The Court: Objection will be sustained.

Mr. Isseks: Diary entries of October 23, 1930, and October 27, 1930, in one exhibit, Government's Exhibit 282.

Now, we have asked counsel to produce a memorandum dated September 23, 1930, file L-1-19, relating to this Turner matter. They have told us they are trying to locate it.

Q. Do you remember, Mr. Smith, at the end of 1930 Mr. Safford, who was assistant to Mr. Knox Smith, went out to Indianapolis, too, in connection with the proposed receivership?

A. No.

Q. Do you remember he came back and told you he had signed papers on behalf of Hartford to put Turner in receivership?

A. No.

Q. Do you know whether or not your company was responsible for filing the petition to put Turner in receivership?

A. Well, I think we joined with others to bring about receivership, other creditors.

Q. Do you remember that at the end of 1930 Mr. I. J. Collins and Mr. Robert Walker come to Hartford and discussed the Monongah situation with you, Mr. Knox Smith, and other executives of Hartford?

A. No, but I would not deny it.

Q. Have any recollection at all about it?

A. No.

[fol. 2222] Q. I show you a diary entry. See if it refreshes your recollection. December 31, 1930.

A. No, I don't remember that conference, Mr. Isseks; but I do not deny that it took place.

Mr. Isseks: I offer it in evidence, Your Honor.

The Clerk: Government's Exhibit 283.

Q. Have you any recollection whatsoever about it?

A. No, sir.

Q. Your mind is a total blank?

A. So far as that particular meeting is concerned.

Q. Have you any recollection of a general meeting at which the subject matter of the diary entry was discussed?

A. No, sir.

Mr. Isseks: I offer it in evidence, Your Honor. I understand Your Honor's ruling about it.

The Court: The objection will be sustained.

Mr. Isseks: I have asked counsel to produce a memorandum of April 15, 1931, relating to the subject matter.

I understand they will try to locate it. It is written by Mr. Knox Smith.

Q. Now, Mr. Smith, you remember a time came in May of 1931 when you communicated with a representative of the Bondholders' Committee named Feldman, with regard to putting Monongah in receivership, and having Robert Walker appointed as Receiver?

A. I remember some time during that period, along in here, we took certain phases of the Monongah situation up with representatives of the Bondholders, at Baltimore.

Q. Do you remember that the gentleman's name was Feldman?

[fol. 2223] A. I do not happen to.

Q. I hand you a diary entry of May 14, 1931. See if that refreshes your recollection?

A. No, it does not; but I have no reason to deny it.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It will be refused.

The Clerk: Government's Exhibit 284.

Q. Now, Mr. Smith, do you remember that after Monongah was put into receivership, your company took the position, in view of the fact that they were in receivership, you were entitled to get the feeders back?

A. Yes, I think that is true.

Q. Remember also that you took the position that their contract was cancelled because they were in receivership, the contract under which they had certain rights on those feeders; and that you could distribute those feeders anywhere else?

A. Yes, sir.

Q. Do you remember that those efforts in effect almost brought a close-down of the Monongah plant?

A. No, sir.

Q. Remember some people down at Fairmont told you that it would result in the plant being closed down?

A. No. That might have been so, but I don't happen to remember the circumstances.

Q. Do you remember that a representative of the Power Company came up to see you and talked to you about it?

A. Yes, sir.

Q. Tell us what happened,—please.

[fol. 2224] A. I don't know as I can tell you. I remember that a representative of the Power Company came to Hartford, and was very anxious that the Monongah plant be kept going for the benefit of the town. I think his company was furnishing the fuel to operate the furnaces; and his company, naturally, wanted that business to continue. I don't remember the details of what was said; but, in general, I would say that he urged us to let the Monongah plant continue in operation.

Q. What did you finally do?

A. About what?

Q. About letting Monongah continue in operation?

A. I think we let them continue for a short time; how long, I have forgotten.

Q. About six months?

A. Something like that.

Q. And then the plant was closed down?

A. I think that is correct.

Q. You took your feeders out?

A. Yes, sir.

Q. You transferred them to Turner?

A. Turner, General Glass, or Winchester; I have forgotten.

Q. It was the group with which Mr. Collins was connected that you transferred them to?

A. Oh, yes. Mr. Collins owned half of General.

Q. And Hocking owned half of General?

A. Some, I think, were sent to Winchester. I don't remember the details.

[fol. 2225] Q. You consulted with Mr. Collins in connection with this whole matter, did you not?

A. I think probably so, Mr. Isseks.

Q. And with Mr. Mandeville too?

A. Yes, I think that is true.

Mr. Isseks: Your Honor, at this time I should like to have a memorandum marked, dated June 12, 1931. It says: "Memorandum of Conference Held June 10, 1931." It says: "Conference at our Hartford office between Mr. F. G. Smith, Mr. Cann (representing the engineering firm of Sanderson & Porter), and myself." I think the original was signed by Mr. Knox Smith. I will show it to the witness.

Q. Mr. Smith, I show you Government's Exhibit No. 285, and ask you whether that signature is that of Mr. Knox Smith?

A. It is.

Q. Will you please look at the memorandum and see if it refreshes your recollection as to anything else that transpired at the conference regarding which you have already testified?

(Witness reads document.)

Q. Does that refresh your recollection any further as to what transpired at the conference about which you have already testified?

A. My testimony, just the last bit of testimony I gave, did not refer to this particular meeting; it referred to somebody, some member of the fuel company, the Gas Company, at Fairmont, coming up to talk with us. This refers to a representative of Sanderson & Porter coming to Hartford.

Q. You mean somebody came up from the Power Company itself?

[fol. 2226] A. Yes, sir.

Q. You were talking about that meeting?

A. I was talking about that meeting.

Q. Was it before or after this meeting?

A. I have not any idea; I assume it was; but whether it was or not, I don't know. This meeting is when a representative of Sanderson & Porter came to Hartford. I remember that a representative did come to Hartford and conferred with us about the Monongah situation, in general. I assume that a lot of these matters were touched upon; but my recollection of that meeting was that we told the representative of Sanderson & Porter that we would not renew the license, because the capacity of the industry was far in excess of the consumption; and that we did not think that there was really a chance of Monongah's being rehabilitated. That is about all I remember about that meeting.

Q. Does the memorandum set forth generally what transpired at the meeting?

A. I would not know. I would not deny it, Mr. Isseks. But I don't remember all of the discussions referred to in this memorandum. I would not deny that they did not take place; but I merely remember that the representative did come and discussed the matter with us; and that we told them in our opinion Monogah could not be rehabilitated, and we doubted very much whether we would give them a license.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted, over objection.
[fol. 2227] Mr. Fuller: If the Court please, this is received for the limited purpose of showing state of mind, et cetera; except as the witness testified as to what was said at the meeting?
The Court: That is correct.
Mr. Isseks: Your Honor, I submit insofar as it recites what Knox Smith says, it is admissible for the truth.
The Court: So far as what Mr. Knox Smith says, I think that is understood. It should not be necessary to go over that each time.
Mr. Fuller: I meant with the same limitation.
Mr. Isseks: That is all right:

Thereupon, Government's Exhibit 285 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, do you remember telling Mr. Carter about the visit of these people?
A. No. I do not deny I did, but I don't remember it.

Mr. Isseks: Your Honor, at this time I should like to have marked a letter dated June 11, 1931, from Mr. Carter to Mr. Levis; at least it has in the lower left hand corner "H.W.C."; and it is a photostat of a document and stipulated as to genuineness by Owens.
The Clerk: Government's Exhibit No. 286.
Mr. Isseks: I offer it in evidence, Your Honor, for the limited purpose—three pages—of showing state of mind of Mr. Carter as an executive of the Owens-Illinois Company.
[fol. 2228] The Court: It will be admitted over objection, for that purpose.
Mr. Isseks: Thank you, I should like to have it read.

Thereupon, Government's Exhibit No. 286 was read to the Court by Mr. Lewis, of counsel for the government.

(Morning recess.)

Q. Mr. Smith, you remember, do you not, that your company sued a company called Nivison-Weiskopf?

A. Yes, sir.

Q. Suit was brought in this State of Ohio in the Federal Court?

A. I assume that is correct.

Q. Suit was brought some time in 1926?

A. Somewhere around there.

Q. Do you remember what the decision of the District Court was? I think it was some time in 1930?

The Witness: We won that case.

Mr. Isseks: Counsel states that the decision was October 26th, 1929, in the District Court.

Mr. Haight: The District Court for the Southern District of Ohio, at Cincinnati. The decision of the District Court was October 8th, 1929; the Circuit Court of Appeals, May 12, 1932.

Mr. Isseks: What happened in the District Court?

Mr. Haight: As to the phase change, we won. As to the other patents, we lost.

Q. You heard the statement of your counsel: as to the first patents you won, on the second patents you lost?

[fol. 2229] A. Yes, sir.

Q. Were you told some time after October, 1929, and before the decision in the Circuit Court of Appeals for the Sixth Circuit, which by telegram you sent, Government's Exhibit No. 131, you sent to Mr. Falck,—the decision in the Circuit Court of Appeals was on May 12, 1932—between the end of 1929 and May, 1932, were you informed by Mr. Collins that he had made a contract to buy out Nivison-Weiskopf?

A. I think so, Mr. Isseks.

Q. He told you how much he agreed to pay, did he not?

A. I have forgotten that.

Q. Did he not ask you to make an arrangement by which you would buy up the patents which they had,—that is, Nivison-Weiskopf had?

A. Yes, there were some conferences held on the question of damages and the question of, I think it must have been title to the feeders, and the question of some few patents that Nivison-Weiskopf had, were discussed.

Q. You won; at least there was a decision in the District Court, partly in your favor and partly against you, by stipulation, in October, 1929?

Mr. Wall: That is contrary to what was stated here, is it not?

Mr. Isseks: You won on the phase change.

Mr. Wall: Yes, and on the others, you are correct, the decision was adverse to us.

[fol. 2230] Q. That decision of the District Court was in October, 1929. Between that date and some time in 1932, did Mr. Collins tell you that he was about to make a contract with Nivison and Weiskopf to buy them out for a sum of money?

A. I think he did.

Q. When he told you—this was the period when it took place, some time in 1931, is that not right?

A. That I don't recall. The records will show.

Mr. Isseks: Your Honor, at this time I offer a photostatic copy of an original contract. It is dated September 30, 1931. It is signed by somebody on behalf of Nivison and Weiskopf—it looks like Miller—and signed by the General Glass Corporation by I. J. Collins, and attested by Thomas C. Fulton, secretary; and has attached to it various exhibits. I offer the entire document which has been stipulated as to genuineness by the defendant Anchor-Hocking Corporation, as the next exhibit.

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[fol. 2231] The Court: You offer Government's Exhibit No. 287?

Mr. Isseks: Yes, Your Honor.

The Court: It may be admitted, over objection.

Mr. Middleton: Over our objection, Your Honor.

Q. You were appraised, were you not, of that purchase by Mr. Collins?

A. I think so.

Q. At the time he made that purchase, did Mr. Collins ask you to purchase certain of the assets of Nivison and Weiskopf?

A. The whole question, as I remember it, came up in the discussion—there may have been two or three discussions—

was first, the question of damages, and title to the feeders, and, as I remember it, just two or three patents—there may have been more—that Nivison and Weiskopf owned.

Q. What happened?

[fol. 2232] A. Well, we—I think we bought the feeders and the patents; and then Nivison and Weiskopf paid us damages up to the extent of what we paid for the patents and the feeders.

Q. Did you have your conversations with Mr. Collins before General Glass bought out Nivison and Weiskopf?

A. I think so, Mr. Isseks.

Q. Do you remember you agreed to pay $20,000 for certain patents of Nivison and Weiskopf?

A. No, I do not. I do not happen to remember that. I thought we paid more.

Mr. Isseks: Maybe you did.

Now, Your Honor, at this time I should like to call attention to the fact that, according to Government's Exhibit 131, the Circuit Court of Appeals for the Sixth Circuit passed upon the appeal in the Nivison and Weiskopf and other cases on May 12, 1932.

Your Honor, at this time I should like to have marked an agreement which bears the date of September 16, 1932, between Hartford-Empire and the General Glass Corporation, signed by the witness on behalf of Hartford-Empire, and by I. J. Collins on behalf of the General Glass Corporation. It has been stipulated as to genuineness by Hartford-Empire. I will show the witness the signatures.

The Clerk: Government's Exhibit No. 288.

Mr. Haight: I wonder, while there is a lull, if Mr. Isseks will accept this statement, in order that Your Honor may follow the thing as it goes along. I understand from Mr. [fol. 2233] Edmund Wood, who is of counsel in this case—not with us but one of the other defendants—that the Nivison and Weiskopf case was argued in October of 1931. It was argued by his father of Cincinnati, on behalf of the Nivison-Weiskopf Company. That case was heard at the same time as the appeal in the Lamb Glass Company case, and in the Kearns-Gorsuch case; the latter two being argued, respectively, by Mr. Drury Cooper, of New York, and by Mr. Charles Neave, of New York. There was one decision for the three cases.

Mr. Isseks: My understanding is that the argument in the Circuit Court of Appeals took place after the contract was signed between Nivison-Weiskopf and the General Glass Company?

Mr. Haight: A few days; and it was argued again in January, 1932.

Q. Mr. Smith, I show you Government's Exhibit No. 288, and ask you whether that is your signature thereon?

A. It is.

Q. Is that the signature of Mr. Collins too?

A. It looks like it.

Mr. Isseks: I offer it, Your Honor.

The Court: It may be admitted, over objection.

Mr. Isseks: Section 1 provides:

"In consideration of the sale of the Nivison-Weiskopf feeders, as set forth below in Section 2, Hartford agrees to pay to General the sum of $20,000."

[fol. 2234] Section 3 provides:

"Hartford hereby accepts the assignment of even date herewith of certain patents, together with the sale of the property other than the glass feeding machines as set forth in the foregoing Section 2, in full settlement for all damages, profits, costs, or other claims which Hartford has, or may have, against General arising out of the use by General and/or by said Nivison-Weiskopf Company, prior to the date hereof, of said Nivison-Weiskopf feeders."

Q. In other words, Mr. Smith, you paid them $20,000 and they paid you nothing?

A. I remember they did pay us something. I may be wrong. That may have been the final deal. If that is the only paper there is covering it, I will accept it.

Q. It is the only paper I have. As far as I know, this is the transaction that took place.

A. Then that is the transaction.

Mr. Isseks: I should like to have marked as the next exhibit, Government's Exhibit No. 289, a document filed in the United States District Court for the Southern District of Ohio, Western Division, Hartford-Empire Company, Plaintiff, against Nivison-Weiskopf Company, Defendant; and it is signed Hartford-Empire Company, by the witness, —it is a photostat of an original—and the General Glass

Corporation, by I. J. Collins, president. It was given to [fol. 2235] us by Anchor-Hocking. I can assure Your Honor it is something we received from them. I should like to show it to the witness.

Q. Mr. Smith, is that your signature on the photostate of the original document which was furnished to us by Anchor-Hocking, Exhibit 289?

A. I have no reason—no way to doubt it. It does not look like my signature.

Q. Is it Mr. Safford's signature?

A. No. That is not Mr. Safford's.

Q. Is that Mr. Collins' signature?

A. It looks like it to me.

Q. You say that signature does not look like yours?

A. No.

Q. But it looks like Mr. Collins' signature?

A. Yes. I think it is, to the best of my knowledge.

Q. Does it look like Mr. Fulton's signature?

A. Yes.

Mr. Isseks: I offer it in evidence, please.

Mr. Fuller: That is subject to our general objection.

The Court: It will be admitted over objection.

Mr. Isseks: I would like to have it read.

Thereupon, Exhibit No. 289 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Nivison-Weiskopf had its own feeder, didn't it?

A. They were operating infringing feeders which I think they built themselves.

Q. You claimed they infringed?

[fol. 2236] A. Yes.

Q. They claimed they did not infringe?

A. I don't know what they claimed. We sued them and the Court said they did infringe.

Q. And the General Glass Company bought them out, didn't they?

A. I don't know if they bought the stock or the assets.

Q. The document shows they bought the assets.

A. Well then, they did.

Q. You paid $20,000 towards that sale?

A. No. We had nothing to do with what Nivison-Weiskopf had. We bought——

Q. You bought what?

A. Feeders and patent rights.

Q. You bought the feeders for $20,000?

A. As I remember it.

Q. You sued them claiming you were entitled to damages and then gave them $20,000?

A. We bought for that $20,000, as I remember it, some of their feeders and some patents that they had.

Q. And they built them themselves?

A. Yes.

Mr. Haight: Doesn't that contract speak for itself? That contract is in evidence. Why waste time going over a legal matter that was handled by attorneys which Mr. Smith would not know about except the business end of it.

Mr. Isseks: Except he signed the contract. But I am [fol. 2237] through with these questions. I will ask about something else.

Q. In addition to those they had some in another plant, didn't they, Nivison-Weiskopf built feeders?

A. I don't recall whether they had others anywhere else or not.

Q. I will refresh your recollection. Don't you remember a company by the name of Rawleigh Company had some Nivison-Weiskopf built feeders?

A. No.

Q. Don't you remember talking to Mr. Levis about it?

A. No. This is the first I have heard that Rawleigh had Nivison-Weiskopf feeders. I know Rawleigh had some feeders.

Q. Don't you remember having had a conversation with Mr. Levis regarding the Nivison-Weiskopf built feeders that were being used or had been used by Rawleigh Glass Company?

A. No. I don't happen to remember that.

Q. Your memory is a complete blank?

A. As far as that particular thing goes. I may have had some such conversations with Mr. Levis but I do not remember.

Mr. Isseks: At this time I would like to have marked a document which purports to be written by Mr. Levis to

Mr. William T. Rawleigh. I have no indication here—it is a copy—where it came from. I am going to——

* * * * * * *

[fol. 2238] Q. I show you a paper marked Government's Exhibit 290 for identification. I will ask you to read it, [fol. 2239] and directing your attention to the third paragraph, see if that refreshes your recollection?

A. (Witness looks at paper.) Mr. Isseks——

* * * * * * *

A. You only wanted me to read the third paragraph?

Q. I would like to have you read the whole matter, but I direct your attention to the third paragraph.

A. Oh, excuse me. (Witness reads.) All right, Mr. Isseks.

[fol. 2240] Q. Have you read that letter?

A. Yes.

Q. That document?

A. Yes.

Q. What is your recollection as to whether you had any conversation with Mr. Levis about it?

A. I did have conversations with Mr. Levis about it.

Q. You did? Tell us what was said please?

A. To the best of my recollection, that Levis advised me —I can't tell you when or how—but they were about to make a purchase of the Rawleigh business and there were some old feeders there, and before he went ahead to make the purchase he wanted to be sure we would not make any claims for damages.

Q. What did you say?

A. I think I said inasmuch as the feeders had not been in operation and they did not represent any particular value, that we would not make any claim.

Q. Did Mr. Levis ever tell you whether he bought them?

A. I assume he did, Mr. Isseks.

Q. Did you ever make any claim?

A. Not that I know of.

Mr. Isseks: At this time I would like to have marked as the next exhibit,—I am not offering Government's Exhibit No. 290 at this time,—I will wait until we examine Mr. Levis or until they can find their copy. I would like to have marked a letter of February 24, 1936, from Mr. Levis to Mr. Rawleigh marked Exhibit No. 291.

Your Honor, I would like to withhold offering that ex- [fol. 2241] hibit until counsel either produce a carbon copy from their files or until we have an opportunity to examine Mr. Levis.

The Court: It may be done.

Q. Now, Mr. Smith, I would like to go to another subject. You recall that there was reference in an exhibit today, I think it was early this morning, to Headley-Thompson?

A. That was correct.

Q. Who were Messrs. Headley and Thompson, if you know?

A. Well, I am not sure, but to the best of my recollection they were employes of the Whitall Tatum Glass Company.

Q. Whereabouts was the Whitall Tatum Glass Company located?

A. Millville, New Jersey.

Q. They were a manufacturer of glassware, were they not?

A. That is correct.

Q. These two gentlemen were employes of that company?

A. I think so.

Q. What were the so-called Headley and Thompson applications?

A. I can only give you a very sketchy idea.

Q. I want what you knew as a business man?

A. Headley and Thompson filed applications on a piece of mechanism used in a forming machine where the mold was inverted so to come upright and the air pressure would come down over the top and the bottle would be blown out. Now I am not sure whether I am right on that.

Q. I think I will make it a little simpler. They had application for a patent for a forming machine?

A. For certain movements on a forming machine.

[fol. 2242] Q. Your company had applications for feeders, did it not?

A. Yes, and I think forming machines too.

Q. You had feeders manufactured for you for licensing, did you not?

A. Yes, under our own supervision.

Q. In connection with your feeders any licensee of yours had to use a forming machine, did he not?

A. Oh, yes.

Q. In other words, he could not make any glassware with your feeder unless he had a forming machine?

A. That is correct.

Q. And any manufacturer of glassware that used any form of gob feeding had to have a forming machine?

A. You can't make a bottle unless you have a forming machine.

Q. You must not mind my elementary question, but I have a problem.

A. So did we.

Q. It sounds as if I am being too simple. In connection with the suction feed device they also had to have formers, did they not?

A. That was a combination. The suction machine was one machine which sucked up and formed in the same machine.

Q. It was all part of one machine?

A. Yes.

Q. But when it came to using any gob feeders device they had to have a separate thing called a former?

A. That is right.

Q. Back in 1923 you had applications for feeding patents, [fol. 2243] did you not?

A. We did.

Q. Did you also have applications for forming patents?

A. Yes.

Q. That is your best recollection?

A. Yes.

Q. At that time there were these applications of Messrs. Headley and Thompson, who were tied up with Whitall Tatum Company?

A. I think even before that time.

Q. Now were there any other applications for forming machines back in 1923?

A. I would assume there were, Mr. Isseks. I can't tell you.

Q. I am particularly directing your attention to the Lynch applications in the name of one Bridges?

A. I think those were filed but I cannot tell you myself.

Q. I want your present recollection. If you have no recollection, it is all right with me.

A. Well, I do not just happen to remember.

Q. But you knew Lynch had application in the name of Bridges?

A. Oh, yes, but I don't know when.

Q. At some time they did have?

A. Yes.

Mr. Isseks: At this time I would like to have marked a memorandum which Your Honor does not have, I will hand you a copy this morning, I have a poor photostat of it. If counsel will give me a better one I will change with them. It is dated November 28th, 1923.

[fol. 2244] (Mr. Wall hands Mr. Isseks a better copy.)

Mr. Isseks: (Continuing) It has on top original to Mr. F. G. Smith. Copies to K. E. P., V. M. Dorsey, W. H. H., signed by R. F. Hatch, and marked Exhibit 292.

Q. I show you this memorandum and ask you whether that is Mr. Hatch's signature?

A. I think it is.

Q. Mr. Hatch at that time was patent solicitor of your company?

A. Yes.

Mr. Wall: It is stipulated as genuine.

Mr. Isseks: Yes, it is stipulated to be a genuine document, as Mr. Wall says. I offer it in evidence.

The Court: It may be admitted.

Mr. Isseks: I would like to have it read.

(Mr. Lewis reads Exhibit 292.)

Q. Now, Mr. Smith, there has been testimony here in connection with your various feeder patents as to one Byrnes, a lawyer, I think from Pittsburgh?

A. That is correct.

Q. Representing Hartford?

A. That is correct.

Q. But in connection with this Headley-Thompson situation he did not represent you?

A. No. He represented Whitall Tatum.

Mr. Isseks: At this time I wish to have marked a paper, we have the original that purports to be on a Hartford-[fol. 2245] Empire paper, both pages signed by the witness as vice-president to one Mr. C. B. Belknap, and has on the top copy to Mr. Baker. There is no stipulation as regards that document, June 26, 1924. But I understand counsel for Hartford have located a copy in their files. That copy was not obtained by Owens, but Owens has refused today to stipulate it. I would like to find out if there is any question as to the authenticity. If there is, I will make a request.

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[fol. 2246] Q. I will ask you, Mr. Smith, whether you wrote that letter to Mr. Belknap? I want to ask you one other question first. Mr. Belknap has never represented your firm, has he, Mr. C. B. Belknap?

A. No.

Mr. Isseks: Your Honor, while the witness is reading it I would like to point out that this piece of paper is written two months after the copy of April 9, 1924.

Mr. Wall: That is correct, and may we point out also forming machines were within the definition of licensed inventions in that agreement?

Mr. Isseks: Oh, yes. That is true, Your Honor.

A. I have no doubt that I wrote that letter.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It will be admitted, over objection. I think we will suspend at this point. The bailiff may recess court until two o'clock this afternoon.

(Noon recess.)

[fol. 2247] (At 2 o'clock p. m., Tuesday, March 18, 1941, the trial was resumed.)

Mr. Isseks: Your Honor, at this time I would like to have read the last exhibit, which is 293.

(Said Government's Exhibit 293 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 294, the original of a letter dated July 10, 1924, from the witness to Mr. Carter. It has been stipulated as a genuine document by Owens.

Q. I ask you, Mr. Smith, if that is your signature?

A. It is.

Mr. Isseks: I offer that in evidence.
The Court: It may be admitted over objection.

* * * * * * *

Q. You heard it read, didn't you?
A. There is not any doubt in my mind.

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 295, a memorandum [fol. 2248] dated July 15, 1924, four pages, purporting to be signed by the witness, and stipulated by Hartford as coming from its files.

Q. Mr. Smith, I ask you to read that and tell us whether you wrote that memorandum.

Mr. Haight: Do you need to have him read it?
Mr. Isseks: No, not if we can stipulate it was written by him.
Mr. Haight: It came from our files.
Mr. Isseks: Will you stipulate he wrote it?
Mr. Haight: Just let him look at the end.
The Witness: I don't think there is any question about it. My initials on it here, and my name is signed to it.
Mr. Isseks: I offer that in evidence.
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have it read.

(Government's Exhibit 295 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to have marked, a 10-page memorandum coming from the files of Hartford, dated Hartford, Connecticut, July 22, 1924, "Carter Memo. in re. Headley & Thompson". I would like to ask the witness a few questions before I offer it.

(Said memorandum marked Government's Exhibit 296.)

Q. First of all, do you recognize the handwriting at the end as that of Mr. Carter?
A. It is.
Q. And I direct your attention to some handwriting on the top of the first page. Do you recognize that hand- [fols. 2249-2250] writing as the handwriting of Mr. Hatch?
A. No, I don't think it is.

Q. You don't recognize it?

A. No, I don't recognize that.

Q. What about the handwriting on the right-hand side?

A. It looks something like Mr. Honiss', but I would not say, I would not be sure.

Mr. Isseks: I offer the document in evidence. It is stipulated as coming from the files of Hartford.

The Court: It may be admitted over objection.

Mr. Isseks: At this time I would only like to have my associate read the last four pages, beginning at the top of page 7, "Estimate of value". The first six pages deal with the merits of the Headley & Thompson application. I am not going to read them. I offer the whole document, though.

(Thereupon last four pages of Government's Exhibit 296 read by Mr. Kramer.)

Mr. Isseks: Now, at this time, Your Honor, I would like to have marked as Government's Exhibit 297, what purports to be copy of telegram dated August 25, 1924, from the witness to W. H. Boshart, of the Owens Bottle Company; and as 298, a letter dated August 25, 1924, from the witness to Mr. Boshart, having been stipulated as genuine by Owens.

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[fol. 2251] Mr. Isseks: I am offering both of them.

The Court: They may be received over objection.

(Said Government's Exhibits 297 and 298 read by Mr. McCracken.)

Q. You didn't give up, Mr. Smith, did you, after writing the letter?

A. No.

Q. You still had hopes of trying to make some deal with the Whitall-Tatum people?

A. Correct.

Q. You have already identified your associates, Messrs. Honiss, Brown, Hatch and Peiler?

A. I beg pardon?

Q. You have already identified Mr. Honiss; he was the patent solicitor?

A. Correct.

Q. And Col. Brown was patent lawyer?

A. Yes.

Q. And Mr. Hatch was patent solicitor?

A. Yes.

Q. And Mr. Peiler was an engineer?

A. My chief engineer.

Mr. Isseks: I would like to have marked, memorandum dated October 20, 1924, of four pages. It has on the top, "Bottle rights of the Whitall-Tatum Company" and purports to be signed by Messrs. Honiss, Brown, Hatch and Peiler. The document has been stipulated as coming from the files of the Hartford-Empire Company. I offer it in evi- [fol. 2252] dence as Government's Exhibit 299.

The Court: It may be admitted over objection.

(Government Exhibit 299 read by Mr. Lewis.)

Q. You heard that exhibit read, did you not, Mr. Smith?

A. I did.

Q. Was that report of these lawyers and the engineer brought to your attention?

A. I think so.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 300 the memorandum dated October 27, 1924, headed, "Whitall-Tatum Company Recommendations by Hartford's Patent and Engineering Departments", and it purports to be signed by the same four gentlemen. It is stipulated as coming from the files of Hartford-Empire Company.

Mr. Wall: Correct.

Mr. Isseks: I offer that in evidence, Your Honor.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Said Government's Exhibit 300 read by Mr. Kramer.)

Q. Now, Mr. Smith, you heard that memorandum read?

A. I did.

Q. Was that brought to your attention in the regular course of business?

A. I don't think there is any doubt of it.

Q. Now Mr. Smith, do you remember that you had conferences with the Owens people in 1924 as to whether or not [fol. 2253] you should take an option from the Whitall-Tatum people?

A. I think we probably did.

Mr. Isseks: Counsel has agreed to produce for Government's inspection, the minutes of the Board of Directors of December 18, 1924, of Hartford-Empire Company, at which there was a discussion, apparently, about this matter, at which Mr. Baker of the Owens Company was present.

At this time I would like to have marked as Government's Exhibit #301, what purports to be a report of H. H. Baker, dated January 9, 1925, to the executive committee of the Owens Bottle Company. It has been stipulated as a genuine document by Owens-Illinois Company, at page 4 of the stipulation. I offer that in evidence.

Q. Who was Mr. Baker, Mr. Smith?

A. He was treasurer of the Owens Company.

Q. At that time?

A. I think so.

The Court: He was treasurer?

The Witness: I think that was his title. I am not dead-sure.

Mr. Isseks: My associates point out, on page 351, there has been testimony Mr. Baker was an officer of the Owens Bottle Company.

Mr. Williams: He was either treasurer or assistant treasurer. I can't remember his positions at any specific time.

Mr. Middleton: Mr. Baker was, after January 1, 1924, treasurer.

[fol. 2254] Mr. Isseks: Your stipulation covers this document. It has been stipulated, Mr. Middleton?

Mr. Middleton: Yes, it has.

Mr. Isseks: I offer this in evidence.

The Court: It may be admitted over objection.

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[fol. 2255] Mr. Isseks: I now offer the agreement dated February 9, 1925. There are two agreements of the same date. This first one is between Whitall-Tatum Company and Hartford-Empire Company, signed on behalf of Whitall-Tatum Company by Mr. Tatum, president, and by Hartford-Empire Company by F. Goodwin Smith, vice-president.

Q. Is that your signature, Mr. Smith, on the last line?

A. It is.

Q. And that is the signature of your secretary at that time, Herbert Knox Smith?

A. It is.

Q. Is that the signature of Mr. Tatum?

A. Well, I assume it is. I am not very familiar with his [fol. 2256] handwriting.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

(Said agreement marked Government's Exhibit 302.)

Mr. Isseks: I won't take the time to summarize it. I think Mr. Baker did a very excellent job of summarizing it.

I now offer an agreement relating to the Whitall-Tatum agreement between Owens Bottle Company, Hartford-Empire Company and Hartford-Fairmont Company, of the same date, February 9, 1925,—five pages. It is signed on behalf of Owens Bottle Company by W. H. Boshart, vice-president, and H. H. Baker, secretary, he attested it; and signed on behalf of Hartford-Empire Company by F. Goodwin Smith, vice-president; and by Hartford-Fairmont Company by F. Goodwin Smith, president, and attested to as to both signatures by Herbert Knox Smith.

Q. Are those your signatures?

A. Correct.

Q. Do you identify Mr. Boshart's signature?

A. It looks like it.

The Court: What is it?

Mr. Wall: It is an agreement covering the rights under the main agreement with Whitall-Tatum.

Mr. Isseks: I offer it.

[fol. 2257] The Court: It may be admitted over objection.

(Said agreement marked Government's Exhibit 303.)

Mr. Isseks: I wish to say that by this agreement Owens agreed to pay one-half of the $20,000.00 payable annually and one-half of any expense that might be incurred in connection with the rights under the option. Owens also agreed to pay one-half of the litigation expenses which might be incurred by Hartford in connection with that agreement, and there was a provision for the 16 formers which would be royalty-free.

Q. Do you remember some time after this agreement was executed in February, 1925, that you had a conference with Mr. Lynch of the Lynch Company?

A. I don't happen to remember it, but it is quite possible that I did.

Q. Do you remember a time came when there was talk of there being a combination of the Lynch forming machine and the Miller forming machine?—I am talking about 1925.

A. I think some such conferences took place.

Q. Do you remember you were present at the conferences?

A. I think I was at one of them.

Q. Do you remember telling Mr. Lynch that you had taken out some insurance in connection with the Whitall-Tatum application?

A. I don't remember telling him, but I think possibly I did tell him.

Q. Do you remember thereafter you told Messrs. Belk- [fol. 2258] nap, Williams and Boshart of the talk you had with Mr. Lynch?

A. I think it is quite likely I did. I don't happen to remember it.

* * * * * * *

[fol. 2259] Q. Now, at this time, Mr. Smith, I would like to show you a memorandum dated October 24, 1927, addressed to you and signed "R. D. Brown", stipulated as a genuine document by Hartford-Empire Company, and I ask you whether you received that memorandum in the regular course of business?

(Said memorandum having been marked Government's Exhibit 304.)

A. I have no reason to doubt that I received it.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to ask the witness a few questions before the document is read.

Q. Did your company withdraw any objections it had to the issuance of the Headley & Thompson patents, if you know?

A. That I cannot tell you.

Q. Do you know whether Owens withdrew any objections they had?

A. I have no idea.

Mr. Isseks: I would like to have this read.

(Government's Exhibit 304 read by Mr. Lewis.)

[fol. 2260] Mr. Isseks: We have asked counsel to see if they can locate a memorandum dated November 10, 1928, from file 031 and L-1-24, referred to in Mr. Knox Smith's diary entry for November 8, 1928.

At this time I would like to offer two amendments to the respective contracts that have already been marked as Government's Exhibits. The first one is dated June 1, 1929. When I said "amendment" I meant revision. It is a complete revision of the contract.

Mr. Wall: New option, is it not?

Mr. Isseks: That is right; new option. And it purports to be signed by Whitall-Tatum Company by Mr. Tatum, and by Hartford-Empire Company by Mr. Smith, its president.

Q. I ask the witness whether that is his signature?

A. It is.

Q. Is that Mr. Knox Smith's signature?

A. It is.

Mr. Isseks: I offer in evidence Government's Exhibit 305.

The Court: It may be admitted over objection.

The Court: We will suspend at this time for 15 minutes.

(Recess taken.)

[fol. 2261] (Afternoon recess.)

The Court: Proceed.

Mr. Isseks: Your Honor, I have marked the agreement between Hartford and Whitall Tatum. That agreement is also an option agreement, substantially like the other one, except that Hartford was permitted to elect whether to take an exclusive or a non-exclusive license under the patents at any time during the option period. The option was to run five years or until the patents expired. Hartford was to pay, instead of $20,000 a year, $5,000 a month, or the aggregate of $60,000 a year as long as the option was not exercised. Hartford did not agree to withdraw any interferences.

The Court: It renews the option for another five years.

Mr. Isseks: To run five years from the date of the contract, and the payments were $5,000 a month, rather than -20,000 a year.

Now, Your Honor, I should like to offer an agreement of the same date, June 1, 1929, between Owens-Illinois Glass Company and Hartford-Empire; signed on behalf of Owens by Mr. Levis as president and general manager; and by the witness, as president of Hartford-Empire.

Q. Do you recognize your signature, Mr. Smith?

A. I do.

Q. And that of Mr. Levis?

A. I think it is.

Q. And that of Mr. Knox Smith?

A. Yes, sir.

[fol. 2262] Mr. Isseks: I offer it in evidence.

The Clerk: Government's Exhibit No. 306.

The Court: It may be admitted, over objection. That is another revised contract of——

Mr. Isseks: June 1, 1929. Under this agreement, Your Honor, it superseded the prior agreement of February 9, 1925, which has already been marked as an exhibit; and provides that Owens will pay Hartford one-half of the -5,000 monthly payment payable by Hartford to Whitall during the latter part of the option. Owens was given the right, royalty-free, to the use of 18 forming machines, formerly permitted to the Illinois Glass Company, as well as the 16 forming machines formerly permitted to Owens.

At this time I should like to have marked a photostatic copy of an assignment by one George Alexander, as Trustee, and—another name—I cannot read it—it looks like Dodge—to Hartford-Empire Company, of the so-called Sears & Lobb patent rights.

The Court: Do I have it in the book here?

Mr. Isseks: I don't think so.

The Court: Give me that again, then.

Mr. Isseks: An assignment dated February 16, 1925, by George Alexander and Marshall J. Dodge, to the Trustees of the United Bottle Machinery Company; and assigns to Hartford certain patents, known as the Sears & Lobb patent rights; the patents relating to, as I understand it, forming machinery.

[fol. 2263] It is Government's Exhibit No. 307, and I offer it in evidence.

The Court: It is the United Bottle Works?

Mr. Isseks: The United Bottle Machinery Company.

The Court: To Hartford?

Mr. Isseks: Yes.

The Court: Certified from Hartford?

Mr. Isseks: Yes, it comes from the Hartford files and has the stamp on it "William H. Honiss", and was furnished us by Hartford.

The Court: It may be admitted, over objection.

Q. Mr. Smith, who is a gentleman called Albert Smith?

A. I don't think he is alive. I think he was a member of the Edward B. Smith Company, brokers in New York.

Q. Investment bankers?

A. Investment bankers.

Q. Was he in any way related to Mr. Knox Smith?

A. No, sir.

Q. Or to you?

A. No, sir.

Q. Who was Colonel Flood?

A. Colonel Flood was—I don't know just what you would call him—he put several concerns together.

Q. A promoter?

A. A promoter, perhaps.

Q. Is he still alive?

A. No, sir.

Q. Did you ever have any conversations with Mr. Albert [fol. 2264] Smith in regard to putting together some of the companies engaged in the manufacture of automatic machinery?

A. Yes; but I have forgotten which companies—oh no—excuse me—automatic machinery?

Q. Yes.

A. Not that I remember.

Q. Did you have any conversations with Mr. Albert Smith with regard to putting together certain of the glassware manufacturers?

A. I think at one time there were two companies which wanted to merge, and I have forgotten which two companies they were.

Q. Can you fix the time?

A. No, I cannot.

Mr. Isseks: Your Honor, at this time I wish to call your attention to Government's Exhibit No. 139, which consists of a memorandum from Mr. Levis to Mr. Carter and others, and has attached to it two pages: one, "Outline of proposed contract between Hartford-Empire, Owens-Illinois and Hazel-Atlas"; and the second page has "Matters to be considered further". I direct Your Honor's attention to Matter No. 4 there, which refers to the Whitall-Tatum option. I should like to ask the witness a question.

Q. Do you remember, when you made your Hazel-Atlas contract—Owens and Hazel-Atlas—the dates I believe have been fixed as July, 1932—was there any discussion of participation by Hazel-Atlas in the payments you were making under the Whitall-Tatum options?

A. I think so.

[fol. 2265] Q. Please tell us what those discussions were.

A. I don't know as I can remember—I have a sort of hazy recollection that we told Hazel-Atlas about these Whitall-Tatum applications; and I think we asked them if they would not pay one-third of the expense.

Q. What did Mr. McNash say—you talked to Mr. McNash, I assume?

A. I think so, yes.

Q. What did Mr. McNash say?

A. I don't think they ever agreed to.

Q. You don't think they did?

A. No, sir.

Q. Was Mr. Levis around when these conversations took place?

A. I cannot be sure. I would have no reason to believe that he was not, but I don't remember in particular.

Q. Your Honor, at this time I should like to have marked an original memorandum, dated August 6th, 1932, written by Mr. Carter; at least it has "H. W. Carter"; and then it has underneath: "E. P."; which has some longhand writing on it. There is a stipulation by Owens which refers to a two-page memorandum on page 22 of the stipulation. All we have as of that date from Mr. Carter to Mr. Phillips is a three-page memorandum.

Mr. Middleton: What is the date, please?

Mr. Isseks: August 6th, 1932. It says on the top: "Owens-Illinois Glass Company Intra-Company Correspondence August 6th, 1932". The original has the handwriting on it on the left hand side of the first page. I should [fol. 2266] like to have it marked first.

Q. I ask you whether you recognize the handwriting on the first page of this Government's Exhibit No. 308?

A. No, I do not have any idea.

Mr. Isseks: At this time, Your Honor, I offer the memorandum from Mr. Carter to Mr. Phillips in evidence. I do not offer the writing on the left hand side. I will wait until we have an opportunity to examine Mr. Carter.

Mr. Fess: If Your Honor please, we assume, on behalf of the Lynch Corporation, that this is offered with the usual limitations. And may we have the same notation made with respect to the other memos which will be offered in this connection?

The Court: You may.

It may be admitted, over objection. The handwriting is not offered at this time,—subject to proof when Mr. Carter takes the stand.

Thereupon, Government's Exhibit No. 308 was read to the Court by Mr. Kramer, of counsel for the government.

Q. You knew, did you not, that some time between the date of your option in 1925, and 1933, that Lynch and Headley & Thompson were in interference in the Patent Office?

A. Oh, yes.

Mr. Isseks: Your Honor, I should like to have marked a document, of April 29, 1933. It is five pages. It is not in Your Honor's book. It is re Whitall-Tatum forming machine patents. It purports to be signed "R. D. Brown". [fol. 2267] It is stipulated as to genuineness. I should like to ask the witness one question.

Q. Is that Mr. Brown's signature?

A. Yes, sir.

Mr. Isseks: I offer it in evidence as the next exhibit, Your Honor.

The Court: It may be admitted, over objection.

Mr. Isseks: Government's Exhibit No. 309.

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[fol. 2268] Q. Mr. Smith, do you remember that in the early part of 1933 you were discussing with Mr. Levis plans for bringing together the various forming machine companies?

A. No, I do not happen to remember it. Mr. Levis probably spoke to me about it.

Q. Do you remember that you were talking about Owens participating in any payments which you would have to make for the purchase of the Headley & Thompson patents?

A. Oh, yes. I think that was understood.

Q. Do you remember that the Owens people were very anxious to avoid making any direct contributions to such a purchase?

A. I do not happen to remember that, Mr. Isseks.

Q. I show you Government's Exhibit 278, which was marked this morning. I have a copy here. I ask whether that does not refresh your recollection? That is dated May 6th, 1933, from Mr. Brown to you. I will ask you whether it does not refresh your recollection that shortly prior to that time Mr. Levis had taken up with you a proposed plan to put together the various forming machine manufacturers. I direct your attention, I think, to the second full paragraph?

A. No. I have forgotten entirely there was any objection on their part to pay half.

Q. My question was a little different. The second paragraph of this memorandum from Mr. Brown to you says Mr. Levis is willing to share this expense, namely, the cost of sharing Headley & Thompson purchase providing it constitutes a part of the general scheme which Mr. Levis has [fol. 2269] been discussing with you. I am asking about that conversation with Mr. Levis called by Mr. Brown a general scheme, but I will call it a plan.

A. I cannot tell you what that plan was. I think Mr. Levis some time around there did mention to me or discussed with me the advisability of having Lynch Company and the Miller Machine & Mold Works join hands or merge.

Q. Did he tell you who was going to put up the money?

A. I don't remember if he did.

Q. Don't you remember he said it would have to be financed by the Owens group and by the Hartford group?

A. No, I don't remember that.

Q. It was financed by the Owens group and the Hartford group, wasn't it?

A. Well, I would have to explain what part we took in it, which I explained the other day in court. What the dealings were between Lynch and the Miller Machine & Mold Works, or how the money was raised and how the stock transactions went, I did not know.

Q. Didn't Mr. Levis tell you?

A. He may have told me what was in the wind but I don't think he ever gave me full details.

Q. Well, we will come to that. We will come to that. But in any event you do remember that he was talking about it prior to May 6th, 1933, with you?

A. I think he did.

Q. Don't you remember also that you were told by Mr. Brown as he states in the memorandum May 6th, 1933, [fol. 2270] Government's Exhibit 278, that if Owens joins in purchase of the Headley & Thompson they want to avoid contributing directly to the purchase, and they prefer arranging it somehow as we are arranging our contribution to the O'Neill purchase. C. B.'s suggestion is that they pay their half of the purchase price for whatever suction rights there may be in Headley & Thompson, or if this does not look plausible enough because there are no Headley & Thompson suction rights then he suggests that Owens buy something or other in the way of suction from us. Do you remember that?

A. No.

Q. You can't even tell why they wanted it secured in this way?

A. Not that I remember.

Mr. Isseks: At this time I would like to have marked photostatic copy of original document dated June 12, but counsel for Hartford tell us the year is 1933 and we accept that as accurate. It is a photostatic copy of a telegram from Mr. Levis to Mr. F. Goodwin Smith. There is a stamp on it, Your Honor, from the files of the Hartford-Empire Company, signed by Safford. I offer the telegram in evidence, Exhibit 310.

Q. I will ask the witness whether you received it in the regular course of business?

* * * * * * *

[fol. 2271] A. When was the Lynch deal made?

Q. The Lynch deal was made in August, 1933, August 25th I think is the exact date?

A. This refers to—I think I received that, Mr. Isseks.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted, over objection
Mr. Isseks: I would like to have it read, please.

Thereupon, Government's Exhibit No. 310 was read to the Court by Mr. Kramer, of counsel for the government.

Q. At this time I would like to have marked a copy of a letter dated June 20, 1933, stipulated as genuine by Owens-Illinois from C. B. Belknap, vice-president, to the witness, Exhibit 311. I will ask you, Mr. Smith, whether you received Government's Exhibit 311 in the regular course of business?
A. I think I did.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted, over objection.
Mr. Isseks: We have asked counsel for Hartford to see if they can produce the letter of June 16, 1933, referred to in the first sentence relating to the Whitall-Tatum option. [fol. 2272] We will make the same request of Owens.
The Court: They may search for them.
Mr. Isseks: Thank you very much.

Thereupon, Government's Exhibit No. 311 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, do you remember talking to Mr. Levis about the Miller situation?
A. Yes.
Q. What was the nature of the conversation?
A. Well, I remember it was suggested that Hartford-Empire buy the Miller Machine and Mold Works. Well, I said we have no interest in doing that, but perhaps the Hartford Special Machine Company might be interested in buying the Miller Machine and Mold Works, and I would take it up with them, and if they wished they could send a representative over to Columbus to go over the property, inspect the machine, et cetera, and they did so go and I think I have already testified that they made up their minds that they did not care to make the purchase.
Q. Are you saying that the Hartford Special Machinery representatives went?
A. Yes.
Q. And not your representatives?

A. One of our representatives may have gone with them. I have forgotten, Mr. Isseks.

Q. Mr. Belknap says in the letter here I understood it was set up so that when your representatives went down to [fol. 2273] Columbus. Do you remember whether you sent anybody?

A. No. I don't remember, but one of our men may have gone with one of the officers or the superintendent of the Hartford Special Machinery Company.

Q. When we get this letter June 16th, that you wrote to Mr. Belknap, we will find out who went?

A. Yes.

Q. Did Hartford Special Machinery turn it down too?

A. They did.

Q. Mr. Belknap said in his letter at the end, when he gets a report from Mr. Hoge he was going to send it to you. Did he ever send it to you?

A. That I cannot remember.

Mr. Isseks: Your Honor, if there is such a report we would like to have it.

The Court: It may be produced.

Mr. Goodrich: Give us the date.

Mr. Isseks: It does not say. At this time, Your Honor, I would like to have marked as Government's Exhibit 312 a memorandum dated June 22nd, 1933, from R. D. Brown to the witness, re Whitall-Tatum forming machine patents, four pages.

[fol. 2274] Q. I will ask you, Mr. Smith, whether this is the signature of Mr. Brown at the fourth page of Exhibit 312?

A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Haight: I would like to make the same reservation as I did in the previous exhibit in regard to the communication from Col. Brown.

The Court: It may be done.

Mr. Isseks: I would like to have it read.

(Mr. Lewis reads Government's Exhibit 312.)

Q. Now Mr. Smith, do you remember during the late spring of 1933 you were discussing with Mr. Levis the so-called unit plan?

A. Yes.

Q. What was that?

A. That was a plan where instead of the Hartford Company charging so much a gross for feeder royalty or so much a gross for forming-machine royalty, or a daily rental on lehrs, we take three different pieces of machinery, all of which have a different function, and would combine them together into what we would call under contract, under license and lease, a unit, and then charge one royalty for that unit, rather than three separate royalties.

Q. Now in 1933 you were talking about that to Mr. Levis?

A. I think so—some time.

Q. Didn't it contemplate that you would try to include as part of the unit, either the purchase of the Miller forming [fol. 2275] machines and the license under the Lynch forming machines?

A. That I can't tell you, Mr. Isseks.

Mr. Wall: Isn't your question a little blind there? You meant the plan?

Mr. Isseks: I meant the unit plan.

Mr. Wall: You meant the plan for setting up the unit license system?

Mr. Isseks:

Q. Yes, the plan for setting up the unit licensing system meant you might have to get in the Ed Miller and the Lynch forming machines in some way?

A. Not that I can recall.

Q. See if I can refresh your recollection. Government's Exhibit 165, letter dated June 30, 1933. You say, "Levis then made quite a dissertation on the unit plan which he thought could legitimately follow the acquisition of the Whitall-Tatum patent as well as some understanding with Lynch and the Miller Machine & Mold Works, and made four suggestions as per enclosed memorandum." The memorandum which is attached has not been read before.

"(1) H. A."—that is Hazel-Atlas—"to pay H. E."—that is Hartford-Empire—"standard royalties on all H. A. production from August 1, 1933, to February 1, 1934, this payment to be without prejudice to any rights that either H. A. or H. E. have under present contract between them.

"(2) H. E. during this period from August 1, 1933, to February 1, 1934, is to try and work out a unit plan policy [fol. 2276] of offering their licensees a feeder, former, transfer device and fireless lehr at substantially present H. E. feeder royalties.

"(3) H. E. will attempt to include in the unit plan a purchase of Headley-Thompson forming machine applications, and either a purchase or license arrangement with Ed Miller and Lynch Machinery whereby the forming machines of Miller and Lynch are available only to H. E. Licensees.

"(4) If H. E. works out the Unit Plan above outlined, H. A. will continue to pay on all H. A. productions so long as all others are paying H. E. royalties on similar devices."

Does that refresh your recollection?

A. No. I know the unit plan was discussed, but we ourselves—Hartford—never saw how it could be brought about.

Q. This letter indicates it. Will you look at the letter, Government's Exhibit 165?

A. It may be what was said, Mr. Isseks, but we did not know how it could be brought about because even if we had licensed Lynch under our patents, or Miller under our patents, those two concerns were selling their machines outright and the licensees of ours using those machines were not paying us any royalties.

Q. Let me tell you what happened. First of all Lynch bought out Miller, didn't they?

A. Yes.

Q. Then Lynch made a contract with you, did they not, [fol. 2277] by which they could not sell a Lynch former unless there was tied up with it a license from Hartford?

A. That is right. No, not tied up. He could sell outright sale so that the licensee owned the machine to anybody who had a license from Hartford on feeders.

Q. That is right. If he didn't have a license, he had to get a license from you on formers?

A. Yes, but no royalty.

Q. If he didn't have a license?

A. Perhaps I am going too quick.

Q. I don't want to anticipate, but in any event if after Lynch acquired Miller and you entered into a licensing arrangement with Lynch, wouldn't the unit plan then be workable?

A. I don't see how.

Q. But you were talking about it in 1933 with Mr. Levis?

A. I think the unit plan was brought up again and discussed.

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[fol. 2278] Mr. Isseks: At this time I would like to go back a little bit to clear up some of these things we took up yesterday. I would like to have marked at this point a memorandum dated April 15, 1931, "In re General Glass Company", which purports to be signed "Knox Smith," furnished us by counsel yesterday. I believe it is in Your Honor's book. Two pages.

(Same is marked Government's Exhibit 313.)

Mr. Isseks: I offer that in evidence.

The Court: Signed by Knox Smith?

Mr. Isseks: Yes, sir.

The Court: Has this been identified?

Mr. Isseks: I will show it to the witness. I was trying to save time. It was furnished us by counsel for Hartford yesterday. It is referred to in one of the diary entries. I show it to the witness and ask him whether it refreshes his recollection there was a conference on April 15, 1931, at [fol. 2279] which he was present, Mr. Isaac Collins, Mr. Eldred, Mr. Safford and Mr. Knox Smith?

The Witness: (After reading same.) I have no reason to doubt it, Mr. Isseks.

Q. You noted at the end there is the typewritten signature, "Knox Smith", and in the left-hand corner, "H. K. S." Those are the initials of Mr. Smith?

A. They are.

Mr. Isseks: I offer that in evidence.

The Court: It will be admitted over objection.

Mr. Fuller: If Your Honor please, inasmuch as there will be several other similar documents with reference to Nivison-Weiskopf, Monongah and Hocking coming along, I assume these documents are offered and received for the limited purpose Your Honor has imposed as to numerous other documents, namely, to show intent, state of mind and motive, and not as to the truth of anything which the writer purports to say was told him.

The Court: Well, I haven't seen the other documents. I don't know what will be taken up; I cannot say for them.

Mr. Fuller: I was simply trying to save time. I ask this document be limited. I will make my request with reference to each exhibit hereafter.

The Court: Very well.

Mr. Isseks: Thank you. I would like to have it read.

(Mr. McCracken thereupon reads Government's Exhibit [fol. 2280] 313.)

Your Honor, at this time I would like to have marked as Government's Exhibit 314, "memorandum in re conference of Nivison-Weiskopf settlement and Monongah Glass situation," dated July 28, 1931, which purports to be signed "Knox Smith".

Q. Mr. Smith, I show you page 5 of Government's Exhibit 314 for identification, and ask you whether that is Mr. Knox Smith's signature?

A. It is.

Mr. Emery: This is limited in the same manner?

The Court: It will be admitted over objection.

Mr. Isseks: I intend to ask the witness some questions which will refresh his recollection as to particular parts of it. I will first, however, have it read.

Mr. Fuller: Might this be limited in the same way that Exhibit 313 was limited?

The Court: If counsel have any objection—I haven't read it.

Mr. Isseks: I don't mind the limitation right now, but I intend to ask the witness some questions as to a portion of it, and if he states what is set forth therein transpired at the conference at which he was present, in view of some of the testimony he gave yesterday which summarizes what is in here, I will offer it then for the truth of what not only was stated by Mr. Knox Smith as to what he said, but also as to the truth of what the witness said to the other parties [fol. 2281] at the conference.

Mr. Fuller: At the present time it is being offered for the limited purpose only.

Mr. Haight: I understand it is not received in evidence yet, Your Honor?

Mr. Isseks: I understood the Court to say he admitted it over objection, after the witness identified the signature.

Mr. Haight: Then I take it, it comes under the ruling Your Honor made with reference to similar memoranda of Mr. Knox Smith's which you disposed of Monday morning, and it is not necessary for us to record our objections to an instrument of this kind, if it is merely introduced without supporting evidence as a memorandum of Mr. Smith; but that the objection which we have already taken to the documents which Your Honor has ruled in, is sufficient to cover it. Maybe that is a little involved.

The Court: Yes, I don't quite follow.

Mr. Haight: If Mr. Isseks identifies, proves the statements in here by Mr. Goodwin Smith, then the objection that we made to these documents, or most of them,—the Knox Smith memoranda, at the beginning or early part of the trial which Your Honor ruled upon last Monday, do not apply. If, however, it is simply offered without supporting evidence of Mr. Goodwin Smith, then I assume it comes under the ruling Your Honor made as to these other memoranda of Knox Smith, and it will not be necessary for us to record our objection, but that the objection we took to [fol. 2282] those carries over to similar instruments. Do I make that clear? I am afraid I don't.

The Court: Yes, I think I get what you have in mind.

Mr. Haight: I don't want to be bobbing up every minute, so I object to this when Mr. Isseks offers it.

The Court: I think I have no reason to object to the record showing your objection to the admission of these documents for the same reason that you objected to those documents which the Court has previously ruled on.

Mr. Haight: That you ruled on Monday?

The Court: Yes; for those reasons.

Mr. Haight: That is right. Thank you.

Mr. Fuller: In that objection the defendant Anchor-Hocking joins.

Mr. Isseks: I would like to have it read. I would like to have the witness be kind enough to listen to it, because I am going to ask a few questions after it has been read by my associate.

The Court: What is the date?

Mr. Isseks: July 28, 1931.

(To the witness:) Do you want to follow with a copy in front of you?

The Witness: Yes.

(Thereupon Government's Exhibit 314 was read by Mr. Lewis.)

Q. Now, you read that, did you not?

A. Yes.

[fol. 2283] Q. Now, directing your attention to the portion relating to Nivison-Weiskopf, do you remember the conference?

A. I remember there were several conferences, Mr. Isseks.

Q. And does the memorandum, pages 4 and 5, set forth what transpired at one or more of those conferences in relation to the Nivison-Weiskopf?

A. I remember the question of damages coming up, also the question as to the purchase of the feeder rights, drawings and patents, and that there was a good deal of discussion about how we oughtn't to make them pay, the General Glass pay back damages, and I think at some discussion that whole question did come up, approximating to some extent what is said here.

Q. Do you remember the discussion about taking the matter up, as far as Hartford was concerned, with Owens?

A. Oh, I think we would have to, under our 1924 agreement.

Q. My question is whether you remember talking about the matter?

A. I don't happen to remember that detail. I think it is probably true.

Q. But it generally sets forth what your present recollection is of what transpired?

A. At some of the meetings, I cannot spot this, these questions were discussed with Mr. Collins.

Q. Discussed with Mr. Collins and Mr. Mandeville?

A. Yes, I think that is true.

Mr. Isseks: Your Honor, at this time I offer pages 4 and [fol. 2284] 5 of Government's Exhibit 314 for the truth of what was said by Mr. Collins, Mr. Mandeville, Mr. Knox Smith and the witness.

Mr. Fuller: We object on the ground that the witness has not identified the conference of which this purports to be a memorandum. He simply says he remembers in general these subjects were discussed; he does not remember the detail nor has he said this document sets forth what did take place at the conference which purports to be written about, and we object to its being offered for the truth. We have only the general objection if it is limited as it has been limited thus far.

The Court: I am wondering—there is no question but the document may assert the truth of what Mr. Knox Smith and the witness say?

Mr. Isseks: That is right.

The Court: How about Mr. Mandeville and Mr. Collins?

Mr. Isseks: The witness has testified he had a conference with Mr. Mandeville and Mr. Collins along the lines of the memorandum. He says he doesn't remember any particular conference because he says he never remembers a particular conference. He said, "I never remember any particular conference." Didn't you?

The Witness: I think I attended over a thousand or two in the last twenty-five years—I cannot.

Q. You don't know of any other memoranda about the conferences you are talking about?

[fol. 2285] A. I don't get you.

Q. You don't know of any other memoranda except this one about the Nivison-Weiskopf conference?

A. All I remember is we had several conferences. We must have had, to take up these various questions in regard to General Glass.

Q. I am talking about Nivison-Weiskopf. I am limiting it.

(No response.)

The Court: I think that is sufficient. I think I will sustain the motion.

Mr. Isseks: You will grant the admissibility?

The Court: Yes.

Mr. Isseks: Thank you very much.

Mr. Fuller: You are overruling the objection; is that it, Your Honor?

The Court: Yes. You still retain your general objection, as to all defendants.

Mr. Fuller: Yes. But you are overruling our request that this be limited as to the intent, state of mind and motive of others except the writer?

The Court: That is right.

Mr. Emery: The other defendants have the benefit of the grounds stated?

The Court: As to materiality and to relevancy.

Mr. Emery: As to the grounds Mr. Fuller stated?

The Court: All right.

Mr. Fuller: If Your Honor please, I did not state as a basis of the objection, in view of previous rulings on the matter, the fact that the agreement as finally made as set [fol. 2286] forth in Exhibit 288, is not at all in accord with this memorandum, because Your Honor has ruled you were entitled to the history of the transaction, but I do call that to Your Honor's attention at this ime.

Mr. Isseks: Just the contrary, Your Honor, on September 15, 1931, two months after—or a month and a half after—there was a contract between Nivison-Weiskopf and Mr. O. J. Collins for the payment of $150,000.

Mr. Fuller: I am talking, if Your Honor please, about the settlement of the claimed damages. This memorandum says that there was to be $50,000 paid by the Nivison-Weiskopf Company. That was not done.

The Court: 288 is the settlement agreement between the Hartford and General Glass.

Mr. Fuller: Exactly.

Mr. Isseks: I would like to point out, as long as we are pointing things out, the memorandum says there is going to be a wash-out, and General won't put up a nickel until Hartford pays $20,000. It is our position when we come to it and argue it, they agreed to it on or about the date of July 28, 1931, and at least before September 15, 1931, and didn't put it in black and white until a year later.

Mr. Fuller: I have no desire to argue the point, but the facts will show this offer was withdrawn.

The Court: Proceed.

Mr. Isseks: I would like to have marked another memo- [fol. 2287] randum dated August 1, 1931, signed "Herbert Knox Smith", in regard to the Monogah Glass Company matter.

(Said memorandum marked Government's Exhibit 315.)

Q. Mr. Smith, will you please look at Government's Exhibit 315? Can you identify the signature?

A. Yes; that is Herbert Knox Smith's signature.

Mr. Isseks: I offer that for the limited purpose only.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Said Government's Exhibit 315 read by Mr. Kramer.)

Q. Now, Mr. Smith, your company brought various suits, did it not, on your gob feeder patents?

A. That is correct.

Q. And Owens brought various suits, did it not, on certain suction patents, as far as you know?

A. Well, I think I have heard that they brought one suit on suction.

Q. Whom did they bring it against, do you know?

A. I would have to go back to the record.

Q. And Owens brought certain suits on gob feeder patents, too, didn't they?

A. Oh, yes.

Q. Now, did your company ever bring any suits on any forming machine patents which you claimed you owned?

A. Yes.

Q. When?

[fol. 2288] A. Well, we sued the—or we didn't sue, we threatened to sue.

Q. Beg pardon?

A. We did not actually bring suit; we threatened suit.

Q. That is different.

A. Yes.

Q. On what kind of patent, what was the name of it?

A. I think we notified Mr. Underwood of the Knox-O'Neill Company that he was infringing two of our patents. One was a Peiler transfer patent, and another was an overlap patent.

Q. Did you ever bring suit on it?

A. I think it was an Ingel patent.

Q. You never sued them?

A. Not that I remember. I think we served notice of infringement, but I cannot remember any suit.

Q. You would know, would you not, if there was any litigation which finally resulted in a decision in your favor?

A. Oh, I ought to.

Q. There wasn't any such decision on a forming machine patent?

A. Not that I remember.

Q. Do you know whether or not Owens brought any suit on a forming machine patent?

A. No, I can't tell you that.

Q. Did you ever bring this suit on the Headley & Thompson patent after you acquired them?

[fol. 2289] A. I don't remember.

Q. You know you did acquire the Headley & Thompson patents?

A. Oh, yes, of course.

Q. And you paid how much?

A. $200,000.

Q. Who paid half?

A. The Hartford-Owens Companies.

Q. You haven't brought any suit since you acquired the Headley & Thompson patents?

A. Not on forming machines.

Q. I am talking about forming machines.

A. No, I don't think so.

Q. And nobody brought a suit on your behalf?

A. No.

Q. Mr. Headley didn't?

A. No.

Q. Or Mr. Thompson?

A. No.

Q. Or the Whitall-Tatum Company?

A. No.

Q. So far as you know, your company never brought any suit on any forming machine patent that you had, or acquired?

A. I don't think so.

Q. You ought to know.

A. What bothers me is that in some of the feeder suits later brought, I couldn't tell you whether forming machine [fol. 2290] patents were included or not.

Mr. Haight: For the purpose of accuracy—it demonstrates how frail human recollection is—a suit was brought against the Washington Mold Machinery & Foundry Company on November 13, 1937, and consent decree was issued on December 14, 1937.

Mr. Isseks: Fine. I accept that as a statement of fact. The suit was brought in 1937 and the consent decree was in 1937?

Mr. Haight: Yes. It was on the Headley & Thompson patents.

Mr. Isseks: That is better yet.

Mr. Haight: I thought that was understood.

Mr. Isseks: I thank you very much. I am glad to hear it.

Q. In other words, in December, 1937, four years after you acquired the Headley & Thompson patents, your company brought a suit against the Washington Mold Company and they consented to it?

A. Yes, I think that is one I had entirely forgotten.

Q. Any other suits—and I am asking you about suits on the forming machine——

Mr. Haight: On the Headley & Thompson?

Mr. Isseks: On any forming machine patent.

Mr. Haight: Col. Brown says "no".

Mr. Isseks: We will accept that. That is exactly what I am trying to find out. I didn't know. We want to know the facts.

[fol. 2291] Mr. Haight: We are always willing to give you the facts.

Mr. Isseks: Thank you very much.

At this time I would like to have marked as the next Government exhibit, a telegram dated July 3, 1933, from Hartford-Empire Company to one E. G. Bridges, Lynch Corporation, Anderson, Indiana. This has not been stipulated, I am told. I would like to know if there is any question about the fact it was sent and received. We obtained it from the Lynch Corporation.

Mr. Wall: We have no way of saying either we did or did not, unless it was in the list we had an opportunity to check for.

Mr. Fess: Did we stipulate it?

Mr. Isseks: No; my notation is nobody stipulated it. We got it from you, though,—Lynch. I would like to know whether Hartford has one like it in their files, is all.

Mr. Haight: We have one like it in our files.

Mr. Isseks: What about the Lynch Corporation? Do they have the original?

Mr. Fess: We haven't checked it, but I have no doubt it was received by the Lynch Corporation.

The Court: You say it is 1933?

Mr. Isseks: Yes, Your Honor, '33. I remember yesterday we went up to a period, I believe in June, 1933, when I referred to Government's Exhibit 165, and particularly to a reference made by the witness at page 2 of the exhibit, [fol. 2292] to a statement made by Mr. Levis at a conference at which Mr. Levis, Mr. McNash and the witness were present, regarding the unit plan, involving the Lynch-Miller machine. I am now following the chronology of what transpired three years later. I offer the telegram in evidence.

The Court: It will be admitted over objection.

(Said Government's Exhibit 316 read by Mr. Isseks.)

Q. Do you know who Mr. Bridges was?

A. He was chief engineer for the Lynch Company.

Q. Lynch Corporation?

A. Lynch Corporation.

Q. And Mr. Werbe, who was he?

A. He was president.

Q. And the Lynch Corporation was making and selling forming machines?

A. That is correct.

Q. You hadn't brought any suit against them?

A. No.

Q. Headley-Thompson hadn't brought any suit against them?

A. No.

Q. They were in interference with Headley-Thompson?

A. Oh, yes, a long interference in the Patent Office.

Q. But no litigation other than that?

A. Not that I remember.

Mr. Isseks: At this time I would like to have marked, copy of telegram dated July 4, 1933. It is unsigned, but we understand it was sent by Mr. Bridges to Mr. Werbe, [fol. 2293] who was in Colorado Springs. I think the contents will show that. It has been stipulated it is a copy of a genuine telegram of Lynch Corporation at page 11 of the stipulation. I offer that in evidence.

The Court: It will be admitted, over objection.

(Said telegram marked Government's Exhibit 317, and read to the Court.)

Q. Do you know who the gentleman referred to as Mr. Uz is?

A. I haven't the least idea.

Q. Do you know Mr. McMurtrie?

A. I met him twice.

Q. Do you know who he is?

A. I think he was a representative of the Lynch Corporation.

Mr. Isseks: I am told, Your Honor, he is a director of Lynch Corporation.

Mr. Fess: Not at that particular time he was not.

Mr. Isseks: He became a director later. One of the defendants in this case.

At this time I would like to have marked, a telegram dated July 15, 1933, addressed to Lynch Corporation, Anderson, Indiana, and signed E. L. Bridges.

(Said telegram marked Government's Exhibit 318.)

Mr. Isseks: I offer that in evidence. Mr. Bridges is a defendant in this case. This has been certified as genuine by Lynch Corporation, at page 12 of the stipulation.

The Court: Very well; it may be admitted.

[fol. 2294] Q. Now, Mr. Smith, were you advised as to the progress of the negotiations between the Lynch Corporation and Hartford?

A. Oh, I think so, Mr. Isseks.

Q. What is your present recollection as to what form the negotiations took?

A. As far as I can remember, Lynch had a patent issued, and the reason I remember it is because they had nearly, so I was advised, nearly a hundred claims in that patent, and that some of these claims would probably read on our machine. Also we acquired the Headley-Thompson rights, or were about to acquire them—I can't remember the date.

Mr. Isseks: The date of September, 1933?

A. Well, that is when we were negotiating, wasn't it?

Mr. Isseks: That is right.

A. And that these claims in the Headley-Thompson would read on the Lynch machine.

Mr. Isseks: Mr. Fess points out the Lynch contract was signed in August 1933. I think the witness was referring to the negotiations with Headley & Thompson, and that contract, unless I am wrong, was dated September 16, 1933.

The Witness: While we were in the negotiations with Lynch, we knew what the Headley & Thompson claims were that were coming to issue.

Mr. Isseks: That is right.

The Witness: And it was because of that situation that we started negotiations with the Lynch Company.

[fol. 2295] Q. Now, at that time the O'Neill deal had been consummated, had it not? I think the documents show here that the final contract between O'Neill and Owens was made by 1933, and you paid your amount, whatever it was,—I forget now,—I think it was $100,000, or an annuity——

A. Correct.

Q. —on May 6, 1933. So that you gentlemen, Owens and Hartford representatives, knew that the O'Neill rights were in Owens and Hartford?

A. I don't think there is any question about that. It is a matter of record what we bought.

Q. Wasn't that one of the things the Lynch people were talking about—what about the O'Neill rights?

A. I haven't any idea. I wasn't at those conferences. I attended the last conference when the paper was signed, or final agreement came out.

Q. Who attended the conferences on behalf of your company?

A. Well, I think probably Mr. Brown or possibly Mr. Eldred.

Q. Wasn't Mr. Safford active in the negotiations?

A. He may have been.

Q. Don't you remember that he was?

A. I don't happen to recall that he was, but there is not any question in my mind that he probably had something to do with some of these conferences.

Mr. Isseks: At this time I would like to have marked, a memorandum, which is unsigned, but dated 7/17/33, and headed at the top, "Advantages to Lynch". It has not been stipulated. I am going to ask counsel whether or not there [fol. 2296] is any question it comes from their files. It has got a certification on it as a paper from the files of Hartford, signed by A. T. Safford, Jr., Secretary.

Mr. Wall: I don't have that, even. You better ask the witness whether that is Safford's handwriting.

Mr. Isseks: I intend to ask him that. I want to know whether there is any question it comes from your files?

Mr. Wall: That is the only way I would identify it.

Q. Is that handwriting thereon, Mr. Smith, the handwriting of Mr. Safford?

A. Yes, I think it is.

Mr. Isseks: Then I offer that in evidence.

Mr. Wall: I find it in my files.

Mr. Fess: On behalf of Lynch Corporation, for the purpose of the record, we desire to enter objection, as I understand under the stipulation we may have objection, because in this instance the memo states certain things with reference to these defendants which we regard as statements of the writer's own opinion, not binding on the Lynch Corporation or its associated individual defendants, unless it be later connected with such defendants.

Mr. Isseks: It is offered for the limited purpose of showing the state of mind of Mr. Safford, who was at that time Secretary of Hartford, and showing the state of mind of the defendant, Hartford-Empire Company.

The Court: It will be admitted for that purpose only.

[fol. 2297] Q. In 1933, which was about a year and a half after the death of Mr. Knox Smith, Mr. Safford was secretary of your company, was he not?

A. Correct.

(Government's Exhibit 319 read by Mr. Lewis.)

[fols. 2298-2299] Mr. Isseks: Now, Your Honor, at this time I should like to have marked a number of pages here in longhand which I will have identified. The pages in the lower right hand corner are numbered from 4438 to 4448. I think by agreement it will be stipulated that those numbers were put on in connection with the photostatic copy work done by the TNEC in the offices at Hartford.

Mr. Wall: That is correct.

Mr. Isseks: It is dated 7/17/33, and headed "Lynch Situation".

The Court: How many pages?

Mr. Isseks: Eleven pages. Some of them are only partially filled.

The Court: Is it signed?

Mr. Isseks: No. It is in longhand, every page.

The Court: All right. Proceed.

Q. Mr. Smith, look at these pages and see if you can identify the handwriting thereon.

A. I think it is Mr. Safford's handwriting.

Mr. Isseks: I offer it in evidence.

Mr. Fess: If Your Honor please, the Lynch Corporation defendant makes the same objection to this as to the previous exhibits.

Mr. Isseks: It is offered for the limited purpose.

The Court: It may be admitted for that purpose, over objection.

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[fol. 2300] Q. Mr. Smith, Mr. Safford had been with your company in 1933 for a number of years, had he not?

A. I think he came in 1928 or 1929.

Q. Am I correct in my understanding that he is a graduate of the Harvard Law School?

A. No, sir.

Q. A graduate of Harvard Colleges?

A. Williams College.

Q. But he went to law school?

A. He went to Harvard Law School for a year or a year and a half.

Q. And, finally, became a lawyer?

A. Yes, sir.

Q. But he never practiced law?

A. No. That is true.

Q. He went right into your company?

A. He did.

Q. After becoming assistant, first, to Mr. Knox Smith, he became secretary of the company?

[fol. 2301] A. That is right.

Q. Mr. Smith, do you remember a time came, through these negotiations in the summer of 1933, when Mr. C. B. Belknap, another ex-lawyer, who became an executive of Owens, came to see you gentlemen at Hartford about the whole situation of forming machines—I will not call it spurious.

A. I don't think he did.

Q. Do you remember that he came there and gave you a proposed outline of working the whole thing out?

A. No; but I think he was quite apt to take the matter up with us.

Q. Do you not know that Mr. C. B. Belknap came to Hartford and took up with you a proposed plan of working the whole forming machine thing out?

A. No. He might have come there when I was away.

Q. No; I want your recollection. Did he not come to see you and talk to you?

A. I do not happen to remember it.

Mr. Isseks: I have no diary entries; but I have something better; I have telegrams: Do you not remember that Mr. C. B. Belknap came to see you, and you and he and Mr. Safford sat down and talked the whole thing over?

A. No; but I know in various negotiations, Mr. Belknap did take part.

Q. Do you not remember he gave you a piece of paper showing how the whole thing would work out?

A. I do not happen to remember it.

[fol. 2302] Q. See if I can refresh your recollection with a telegram—not a diary entry—that Mr. Bridges sent to Mr. Werbe.

Mr. Isseks: I now have a telegram dated July 19, 1933, from Mr. Bridges to Mr. Werbe; stipulated as to genuineness by Lynch. I offer it in evidence, Your Honor.

The Clerk: Government's Exhibit No. 321.

The Court: It may be admitted, over objection.

Mr. Isseks: This telegram says: "Collins phoned"—and I think I ought to say here I think this is Harry Collins and not I. J. Collins, so that there will not be any misunderstanding.

Mr. Wall: That would be Collin.

Mr. Isseks: "Collin phoned that Belknap obtained very satisfactory agreement with Smith. Uz and I will meet Levis Friday afternoon at Toledo. You be at Antlers Hotel. Answer".

Q. You heard me read that?

A. Yes, sir.

Mr. Middleton: If Your Honor please, may we register a special objection on behalf of these parties mentioned: Mr. Belknap, Mr. Levis, and Owens? I do not know what the importance of this is. I do not know for what purpose it is offered.

Mr. Isseks: I will be glad to state the purpose.

The Court: State the purpose.

Mr. Isseks: The purpose is to show that there was a [fol. 2303] conspiracy on the part of Messrs. Levis, Belknap, the witness, Collin, Werbe, and Bridges, to violate the Anti-Trust Laws. They got together to take care of the whole machinery business with respect to forming machines, and, before they got through, they had it all in the hands of the conspirators, namely, Owens, Hartford, and Lynch. It is offered here to show the truth of what Mr. Bridges says, and to show the state of mind of his people.

Mr. Middleton: Your Honor, I suspected, from a reading of the complaint in this case, that there was some such notion in the government's mind. But I do not see that this telegram is proof of anything. We object to it.

The Court: It may be admitted, for the limited purpose.

Q. You heard me read it?

A. Yes, sir.

Q. Does it refresh your recollection that Mr. Belknap came to see you and worked out a satisfactory agreement?

A. No. There is no question in my mind, Mr. Isseks, that I took the matter up with Mr. Belknap, or that he took the matter up with me; but whether he came to Hartford, or whether we met in New York, I cannot tell you.

Q. See if I can refresh your recollection.

Mr. Isseks: I should like to have marked a document which has in the upper right hand corner 7/18/33, in certain handwriting. In the center it says: "Outline of proposed agreement between O. I. and L. C."—I assume Owens-Illinois and Lynch Corporation—"(Subject to de- [fol. 2304] tail changes by T. C. W.) T. C. W. I assume is the defendant Werbe. I should like to have it marked first. It has in the upper right hand corner in handwriting 7/18/33.

The Clerk: Government's Exhibit No. 322.

Q. Look at the handwriting in the upper right hand corner and see if you can identify it.

A. It looks to me like Mr. Safford's.

Mr. Isseks: Your Honor, I offer it in evidence.

Mr. Fess: If Your Honor please, the Lynch Corporation defendant renews the same objection as to the previous exhibit.

Mr. Isseks: I offer it for the limited purpose. I am going to ask the witness some questions. Maybe he can help me out. Perhaps I better ask him first:

Q. Read it, please, the particular notation in the upper right hand corner; and tell us whether you do not remember having a talk with Mr. Belknap and Mr. Safford, at which conversation Mr. Belknap handed either you or Mr. Safford, in the presence of the three of you, that particular document, or, rather, the original of which that is a photostat?

A. No, I do not, Mr. Isseks.

Q. Does the notation in the upper right hand corner help you at all?

A. This notation——

Q. It says, "Handed to us by C. B. B. at Hartford"?

A. That does not recall anything.

Q. Look at the telegram, Government's Exhibit No. 321, and see if that does not refresh your recollection with ref- [fol. 2305] erence to an agreement made between Mr. Belknap and you?

A. No, sir.

Mr. Isseks: I offer it in evidence, Your Honor, for the limited purpose.

Mr. Middleton: Objection.

The Court: It will be admitted, over objection.

Thereupon, Government's Exhibit No. 322 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Now, Mr. Smith, am I correct in my recollection that you said you do recall talking to Mr. Belknap?

A. Well, this whole subject must have been discussed with Mr. Belknap, and possibily Mr. Levis.

Q. What is your recollection—that you did talk with him?

A. As a pure recollection, with nothing very definite about it, I think Mr. Belknap was in the final negotiations.

Q. What was the final agreement you made with him, do you remember?

A. No. I remember what we made with Lynch.

Q. Do you not remember that you made the agreement with Mr. Belknap and not with Lynch? That is what I am getting at. Be very specific about it.

A. No, I think Mr. Belknap gave us a general outline of what Owens was going to do, except I do not remember the details of any financing; and I think he was familiar with what kind of deal we were going to make with the Lynch Corporation; but just what took place, or when, I cannot tell you.

Q. Did you deal with anybody at Lynch?

A. Oh, yes.

Q. Who?

[fol. 2306] A. We met Mr. Werbe.

Q. When?

A. I cannot tell you definite dates. I think Mr. Bridges was in some of the conferences.

Q. You heard me read the telegram: "Collin phoned that Belknap obtained very satisfactory agreement with Smith". Do you not remember making a deal with Mr. Belknap?

A. No. If I did meet Mr. Belknap at that date, I probably told him what we would do.

Q. There is a memorandum here in the handwriting of Mr. Safford; you have identified: "Handed to us by C. B. B. at Hartford". It is dated 7/18/33. The telegram is July 19, 1933. That was the next day. Does that not refresh your recollection that you talked with Mr. Belknap and made an agreement that day? Mr. Bridges wrote this; I did not write it.

A. I don't think there is any doubt, Mr. Isseks, but what I talked to Mr. Belknap or others about these negotiations.

Q. Did not Mr. Belknap tell you that somebody would have to buy up Miller and pay some money, and the best one to do that would be Lynch?

A. No, I remember no such thing.

Q. Did not Mr. Belknap tell you that they would have to have some money, and that you would have to put up some of the money?

A. No. I think either he, or whoever it was, said that the arrangements had been made, financial arrangements had been made, whereby the Lynch Corporation was going [fol. 2307] to buy out the Miller Machine & Mold Works. The details of that financial transaction, I do not know. It is true, I think, that before the final papers were signed, Lynch was in need of some more money, and, as I testified, we gave him licenses, and he gave us licenses, and we paid $125,000.

Q. What I am getting at: Did that not all come from Mr. Belknap, and not from Mr. Lynch who was in Colorado?

Mr. Wall: Mr. Lynch was not in Colorado. He was deceased at that time.

Mr. Isseks: I am very sorry. I meant Mr. Werbe.

Q. Did not the suggestion come from Mr. Belknap, and not the Lynch Corporation whose executive head was out in Colorado?

A. I cannot tell you. Of course there was a discussion at some time between us as to what Owens were going to do, and what we were going to do.

Q. Whom did you have that discussion with?

A. I cannot tell you. It might have been Mr. Belknap. It might have been Mr. Levis.

Q. It might have been anybody. What is your best recollection?

A. From the Owens Company——

Q. What is your best recollection?

A. I think probably the man we discussed these matters with was Mr. Belknap.

Q. That is right. Was he not the only one that told you about the necessity of financing Lynch's purchase of Miller?

A. He may have been.

Q. What is your best recollection?

[fol. 2308] A. I do not just remember. I know that Lynch—when it came to a final show-down, the Lynch Corporation needed some more money because they had plans for——

Q. Do you not know that Lynch did not put up a red cent; they got the money from Owens and from Hartford, and from Owens' executives?

A. No, sir.

Q. This is the first time you heard that?

A. Do not misunderstand me. I testified, I think, the other day that I knew some financial arrangements were being made between Lynch and the Owens crowd, as I called it. The details of that, as to who was putting up what, I don't think I was ever fully advised of. I may have been.

Q. Were you not told before you could get rid of Miller and have them out of the picture, they would have to be bought by Lynch, and that somebody would have to put up $450,000?

A. No, I do not put it that way at all.

Q. You put it any way at all. Tell me how it happened.

A. Some time during this period, of course, we were advised that Lynch was going to take over Miller Machine & Mold Works. We had declined to do so. The Hartford Special Machinery Company had declined to do so. And we were advised, probably by the Owens people, that Lynch was going to buy and take over the Miller Machine & Mold Works.

Q. Were you not told by Mr. Levis or Mr. Belknap that [fol. 2309] you would have to help finance it?

A. Eventually, when we came down to final negotiations, yes, I think that is true.

(Morning recess.)

Mr. Isseks: Your Honor, at this time I should like to have marked a two-page photostat copy of a two-page longhand memorandum that has on the top in handwriting: "Lynch Deal 1933"; and bears no date other than that; and has been stipulated,—at least it has the stamp on it that it is from the files of Hartford.

Mr. Wall: Do you care to identify it by page numbers?

Mr. Isseks: The page numbers in the lower right hand corner are 4454 and 4455.

The Clerk: Government's Exhibit No. 323.

Q. Mr. Smith, can you identify from this photostat the handwriting on both pages? Whose handwriting is that, sir?

A. Mr. Safford's.

Mr. Isseks: I offer it in evidence.

Mr. Fess: On behalf of the Lynch Corporation, we enter the same objection as previously.

The Court: It is offered for a limited purpose.

Mr. Isseks: Yes.

The Court: It may be admitted, over objection.

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[fol. 2310] Q. Now, Mr. Smith, at the time you were having these conferences with regard to Lynch, Headley & Thompson, and Miller, there was talk, was there not, of the repeal of the National Prohibition Act?

A. The Act did go into effect in 1933, did it not, the latter part of 1933?

Q. I believe the Amendment——

A. —I mean the Amendment.

Q. Was repealed some time in 1933?

A. Yes. I don't know what date it was.

Q. I want to know how the possible advent of the repeal of the 18th Amendment was considered by the manufacturers of automatic machinery?

A. Well, I think they felt probably it would increase their business.

Q. You felt that with repeal more machinery would be used, both forming machines and feeders?

[fol. 2311] A. Well, it would merely take one type of forming machine, probably, the narrow-neck type.

Q. In connection with liquor bottles?

A. Yes, Lynch's original machine.

Q. In other words, you were anxious to work out some arrangement with Lynch before there was an increased volume of the use of the narrow-neck type of machine?

A. I don't remember any such thought, Mr. Isseks.

Q. Were there not discussions between you and Mr. Levis about the fact that with the repeal of the 18th amendment, there would be a greater use of the narrow-neck type of machines?

A. There might have been.

Q. Do you not remember them?

A. No, I do not remember that particular conversation.

Q. Do you not remember that you were actively interested in the fact that repeal might come about and there would be greater use of machinery?

A. I think everybody knew that, manufacturers and everybody else, that if repeal did come about, the production of liquor ware, beers, and so on, that the total production of the industry would go right up.

Q. And more machinery would be needed?

A. Oh, I would think so.

Q. Your company manufactured narrow-neck machines, did you not?

A. That is correct.

Q. When I say manufactured: you had it done by the [fol. 2312] Hartford Special Machinery Company?

A. Most of it was done there.

Q. The Lynch people manufactured a narrow-neck machine?

A. That is correct.

Q. There was no litigation between you two companies at that time?

A. No, there had been no suit brought by either company.

Q. Were you not anxious to work out some arrangement with Lynch before there would be this increased volume and more demand for narrow-neck machines?

A. I don't remember that the change in the law played any part in it.

Q. Was that not one of the things that you talked about with Mr. Levis?

A. I don't remember. I might have done so, Mr. Isseks.

Mr. Isseks: Your Honor, at this time I should like to have marked another longhand memorandum, of three pages. It has the notation in the upper left hand corner: "7/19/33, Lynch Anti-Trust Situation". The figures in the lower right hand corner are 4451 to 4453, inclusive. Each page has a stamp that is from the files of Hartford, a stamp signature of Mr. A. T. Safford, Jr., Secretary.

Q. Mr. Smith, look at these three pages, and tell us whether you can identify the handwriting on each page?

A. I think it is Mr. Safford's handwriting.

Mr. Isseks: Thank you very much. I offer it in evidence, Your Honor, for the limited purpose.

[fol. 2313] Mr. Fess: The Lynch Corporation enters the same objection as with reference to the other exhibits.

The Clerk: Government's Exhibit No. 324.

The Court: It may be admitted, over objection. Proceed.

Mr. Williams: Has that been identified by the witness?

Mr. Isseks: The witness identified it as Mr. Safford's handwriting, each page.

Q. Is that right?

A. That is the way it looks to me.

Thereupon, Government's Exhibit No. 324 was read to the Court by Mr. Lewis, of counsel for the government.

[fol. 2314] Mr. Isseks: Your Honor, at this time I would like to have marked a letter dated July 28, 1933, addressed to the witness on the stationery of Whittemore, Hulbert, Whittemore and Belknap, and purports to be signed W. J. Belknap, R. D. Brown, as Government's Exhibit 325.

Q. I will ask the witness whether he identifies the signature of Mr. Brown?

A. I do.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Fess: Same objection.

Mr. Haight: With the reservation heretofore made with respect to privilege——

The Court: It may be admitted, over objection.

Mr. Isseks: I would like to have it read, please.

Thereupon, Government's Exhibit No. 325 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Do you remember, Mr. Smith, when you finally made the purchase of the Headley & Thompson patents, or whatever they were, applications or patents, half of the amount paid was paid by Owens?

A. That is correct.

Q. They paid $100,000 and you paid $100,000?

A. Correct.

Q. Do you remember in the summer of '33, before the final closing of these various deals which, for the sake of clarity I will state were around the end of August, 23rd, 24th, and 25th, we will come to that later. Do you remem- [fol. 2315] ber before that time of you having various talks with Mr. Levis and Mr. McNash about your 1932 contracts?

A. No, but I might very well have.

Q. Don't you remember that that was the period of time during which you were trying to get Mr. McNash to change the arrangement by which you would have to bring a suit in some other Circuit rather than the Circuit or get a decision before July 1st, 1934?

A. I remember that came up.

Q. Don't you remember Mr. Levis telling you that he said to Mr. McNash that he, Levis, will not go through with the Miller deal unless McNash does something to straighten out that situation?

A. No, I do not.

Q. Don't you remember that?

A. No.

Q. But you remember Levis told you that he told Mr. McNash he, Mr. Levis, would not go through with the

Lynch deal unless Mr. McNash made some arrangement with you to clarify this July 1st, 1934, situation?

A. No. I know Mr. Levis was using his best endeavors to get that July 1st, 1934, situation straightened out with Mr. McNash.

Q. Don't you remember being present at conversations with Mr. Levis and McNash, and Mr. Levis said to Mr. McNash, "Unless you straighten this out I won't go through with Ed Miller"?

A. No. I don't remember it at all.

[fol. 2316] Q. Don't you remember Mr. Levis said in the presence of Mr. McNash, "Unless you straighten this out I won't go through with the Lynch deal"?

A. No.

Q. Let me see if I can refresh your recollection. I am now reading from Exhibit 168 from the witness to Amory Houghton, August 10th, 1933, "I am not sending a copy of this letter to Alex Falck. Inasmuch as I first want to receive a report from C. B. Belknap as to what success he had with Philbin. Levis has told McNash that he will not go through with the Miller deal, and that he will not go through with the Lynch deal unless he, McNash, gives us the relief for which we are asking." Doesn't that refresh your recollection?

A. No. But if I wrote it, then it must have been true.

Q. Doesn't that refresh your recollection that Mr. Levis was going to finance the Lynch transaction?

A. No.

Q. Doesn't that refresh your recollection that Mr. Levis was going to work out for Lynch the acquisition by Lynch of the Miller people?

A. No. I think we always knew certainly towards the end that Mr. Levis or his associates had something to do with working out of the financial purchase.

Q. Don't you remember that finally the deal that was made was this: Hartford was to pay $100,000 towards the Headley & Thompson application. Owens was to pay the same amount for the same purpose?

[fol. 2317] A. That is correct.

Q. Hartford was to pay $100,000 or $125,000 for whatever feeder rights Miller and Lynch had?

A. That is correct.

Q. And that Owens was to pay 125 or 150 thousand dollars towards whatever suction rights Miller and Lynch had?

A. I think I knew that, Mr. Isseks.

Q. And that the $250,000 contributed by Hartford and Owens would be given to Lynch to pay to Miller?

A. Well, it was all done at the same time, as I remember it, Mr. Isseks.

Q. It was all part of the same plan, wasn't it?

Mr. Haight: Wait a minute. Let him finish.

A. Lynch needed some money, and we had agreed to pay up to a Hundred Thousand, or eventually paid 125,000 and retained a cross license from Lynch under its patents. We gave it a cross license under some of our patents, and we purchased from in its future gob feeder rights.

Q. You knew, did you not, that $450,000 was needed to buy Miller?

A. I must have known it, Mr. Isseks.

Q. And the balance of $200,000 that Lynch would have to get, they would have to get it from somebody?

A. I would assume so.

Q. You knew they got it finally from Mr. Levis and a group he got togther?

A. I knew he got it from some group through Mr. Levis' associates that Mr. Levis had negotiated.

[fol. 2318] Q. What interest did Mr. Levis have, if he told you any, in getting Lynch to buy up Miller?

Mr. Middleton: I object. It calls for an opinion.

The Court: Objection will be overruled. He said, "If he told you".

Q. Did Mr. Levis tell you what his interest was?

A. I would not say.

Q. You would not say he did not say?

A. No.

Mr. Isseks: At this time I want to apologize for my question to Mr. Middleton.

I offer in evidence Exhibit dated August 14, 1933, stipulated by Hartford as coming from its files, marked Exhibit 326.

Q. Mr. Smith, I would like to have you look at this Exhibit 326, and tell us if you saw that memorandum on or about the date it was written?

A. I don't happen to remember that particular memorandum, but I would assume if Mr. Safford met Mr. Belknap in New York that he probably reported that meeting.

Mr. Isseks: Thank you, sir. Your Honor, I offer the memorandum for the limited purpose, not for what Mr. Belknap is alleged to have stated but as to what is stated by the document as having been the arrangement made at the time insofar as it affects Hartford.

* * * * * * *

[fol. 2319] Now, at this time I would like to offer a copy of a contract between Lynch and the Ed Miller Company which has been furnished us by counsel for Lynch. This is not a photostat of an original, but it is a typewritten copy given to us by Mr. Fess. It is dated August 21, 1933, and purports to be signed Ed Miller and the Lynch Corporation. And Ed Miller is designated here as a person doing business under the name of Miller Machine and Mold Works.

The Court: I don't have a copy.

Mr. Isseks: No, sir, Your Honor. It is a formal document.

The Court: Do you want that marked Exhibit 327?

Mr. Isseks: Yes. I offer it in evidence.

[fol. 2320] The Court: It may be admitted over objection.

Mr. Isseks: Your Honor, I would like to point out three facts only. Mr. Miller sold his business to Lynch for $450,000, of which $250,000 was immediately paid. The balance was payable within sixty days. In paragraph 5 of this contract Mr. Miller agreed to disclose to Lynch Corporation all inventions he might make relating to glass feeding or glass working machinery for a period of ten years. In paragraph 6 Mr. Miller agreed to stay out of the business of manufacturing or selling glass working or glass feeding machinery, or permitting others to use his name, within the United States with the exception of the state of New Mexico.

I would like to offer the next exhibit, 328, an agreement between the Lynch Corporation and the Owens Corporation. It is dated August 23rd, 1933. Copy has been furnished us by counsel for Lynch, except that they have, by slips of paper, indicated that some time after the institution of this lawsuit here certain portions were cancelled or deleted.

Your Honor, I offer only the original contract of August 23, 1933, signed by Mr. Levis on behalf of Owens-Illinois, and by Mr. Werbe on behalf of Lynch Corporation. It has been furnished us by Mr. Fess yesterday as a true copy of the contract, marked Exhibit 328.

The Court: It may be admitted, over objection.

Mr. Isseks: Under this contract Lynch licenses Owens, royalty-free, and exclusively, on all of Lynch's suction inventions acquired or controlled prior to January 1st, 1951. The agreement cites in paragraph 2 Owens paid to Lynch [fol. 2321] $125,000 simultaneously with the execution of the agreement.

(Reading excerpts from exhibit.)

I would next like to offer Exhibit 329. It is dated August 23, 1933. This has been furnished us by Mr. Fess, counsel for Lynch, and it purports to be signed by Mr. Werbe on behalf of Lynch, and by the witness on behalf of Hartford-Empire Company.

The Court: It may be admitted over objection.

Mr. Isseks: Under this agreement the recitation has a consideration of $125,000 paid to Lynch. Lynch grants the Hartford an exclusive license, royalty-free, under the Lynch feeder patents owned or controlled by Lynch, and Lynch agreed Hartford could file and prosecute any infringements.

Q. Now, Mr. Smith, do you remember up until the closing you were under the impression all you would pay for these feeder patent rights was $100,000?

A. I think that is true.

Q. Then after closing Mr. Levis told you that you would have to pay another $25,000?

A. No. He asked if we would.

Q. What did you say?

A. We said yes.

Q. Did he tell you why he wanted that extra $25,000?

A. He did not want it. Lynch wanted it.

Q. Don't you remember it was not clear whether you [fol. 2322] would pay 100,000 or 125,000, or they would pay 125 or 150 thousand?

A. I think up to the time the agreement was signed, or about to be signed, we had told Lynch that we would pay $100,000, and just before signing I think Mr. Werbe said they got him short and would we raise that from $100,000 to $125,000, which we did.

Q. Did he give any reasons why?

A. I don't remember the reasons except that Werbe had these plans that he wanted to go ahead with and needed some more money, as I remember.

Q. See if I can refresh your recollection. I am now reading from Government's Exhibit 169, dated August 24th, 1933, from the witness to Mr. Houghton.

Mr. Kramer: Which Houghton?

Mr. Isseks: Mr. Amory Houghton. Whenever I say Mr. Houghton I mean Amory Houghton unless otherwise specified. The first three paragraphs, "We signed the Lynch papers a little after six yesterday afternoon". Where was that done; at Hartford?

A. No. That was done in New York.

Q. Everybody was in New York?

A. That is right.

Q. "Yesterday morning Bill Levis gave me for the first time all his reasons for the extra $50,000—$25,000 of which he paid and $25,000 of which he thought we should pay. There was some logic and some justification for his con- [fol. 2323] tentions. Therefore I paid our share. Levis says that after thinking it over further, if he wants us to send him $25,000 he will be glad to do so." Does that refresh your recollection as to why he wanted $25,000?

A. No. I think Lynch was just so much short.

Q. Was anybody else wanting any more money?

Mr. Haight: I think this was gone over at very great length many days ago, and it seems to me no good is to be served by plowing out and already plowed field.

The Court: I will not interfere at this point.

Q. Mr. Smith, I want to get one thing clear. You did not pay an extra $25,000 over the $125,000?

A. No, no.

Q. The total you paid for these feeder rights——?

A. $135,000.

Q. And up to the closing you only expected to pay $100,-000?

A. As I remember it, I think that is correct.

Q. How did you come about valuing these rights at either 100 or 125 thousand dollars?

A. Well, I don't know as I can tell you. I thought we should make the deal with the Lynch Company because we did not want to litigate our differences of opinion, they claiming we infringed their rights, and we certainly thought they infringed the Headley-Thompson rights, and I also thought it was a good deal for our licensees to have a live, [fol. 2324] up-to-date corporation that built good machinery, as Ed. Miller was quite ill and not paying much attention to his business, and I thought it would be a very good thing to have the Lynch Corporation be in a position to serve our licensees with the three types of forming machines. Up to that point the Lynch Corporation had merely made a narrow-neck machine. I think at that time the Lynch Ten was just coming out. They built other Lynch machines before that, had a great many of them, some four or five hundred I think.

The Court: I think you may suspend at that point. The bailiff may adjourn court until two o'clock this afternoon.

(Noon recess.)

[fols. 2325-2326] At 2 o'clock p. m. Wednesday, March 19, 1941, the trial was resumed.

Mr. Isseks: Your Honor, at this time I would like to have marked as the next Government's Exhibit, an agreement between Hartford-Empire Company and the Lynch Corp., dated August 23, 1933.

(Marked Government's Exhibit 330.)

Mr. Isseks: This copy, I believe, was furnished us by Lynch Corp. It is a typewritten copy, and purports to be signed by the witness as president of Hartford, and by T. C. Werbe as president of the Lynch Corp.

The Court: August 23, 1933.

Mr. Isseks: Yes.

The Court: We have had one of those identified and admitted—329.

Mr. Isseks: Yes, Your Honor, but this is another agreement. The other agreement was with regard to the purchase by Hartford of certain feeder rights up to $25,000.00. This, Your Honor, relates to rights in connection with the forming machinery.

Mr. Wall: A license agreement.

Mr. Isseks: License agreement, that is right. Separate agreements, separately executed. I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

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[fol. 2327] Q. Now, Mr. Smith, you testified before as to the reasons for making the arrangement with Lynch. You were talking about the reasons for making the arrangements for the forming machines, were you not?

A. Yes.

Q. You also talked about the reasons for making the arrangement for making the feeder machines that went from Lynch to your corporation?

A. That was all part of the whole set of negotiations.

Mr. Isseks: At this time I would like to have marked, a letter which has been furnished us by Lynch Corp., stipulated to be a genuine document, two pages, but the copy furnished us apparently is a carbon. It has been typed on both sides of the page, the first page on the front, second page on the back. It is dated September 2, 1933, from Mr. Werbe to the witness. Is there any dispute Mr. Smith received this in the regular course of business?

Mr. Wall: I don't dispute it. I think he did, subject to check; but I think he did.

Mr. Isseks: I would like to offer it in evidence.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Said letter, marked Government's Exhibit 331, read by Mr. Lewis.)

Mr. Isseks: At this time I would like to have marked a [fol. 2328] reply to that letter, dated September 6, 1933, from Mr. Smith, the witness, to Mr. Werbe. It has been stipulated as a copy of the genuine document by Lynch.

Q. I show you a copy, and ask you whether you sent that letter in the regular course of business? This is a copy of the original.

A. (After witness reads same.) I have no reason to doubt it.

Mr. Isseks: We will offer it in evidence.
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have it read.

(Government's Exhibit 332 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked, a letter dated September 13, 1933, addressed to Mr. Werbe, written by one S. F. P., with a copy to Mr. Miller, apparently signed "Hartford-Empire Company, by S.F.P." I would like to have it marked Government's Exhibit 333.

(So marked.)

It has been stipulated by Hartford as a copy of a genuine document.

Mr. Wall: Correct.

Q. Mr. Smith, who in your organization has the initials "S. F. P."?
A. Sidney F. Parham.
Q. He is one of your patent solicitors?
A. Yes.

Mr. Isseks: Your Honor, I offer that in evidence.
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have it read.

[fol. 2329] (Government's Exhibit 333 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 334, a letter dated September 13, 1933, to Hartford-Empire Company, apparently signed by T. C. Werbe, on behalf of Lynch Corp., stipulated as to genuineness by the Lynch Corp.

And I would like to have marked as Government's Exhibit 335, the reply, dated September 20, 1933, from Mr. Arthur T. Safford, Jr., secretary to Mr. T. C. Werbe, stipulated as to genuineness by the defendant, Lynch Corp.

I offer both exhibits, 334 and 335, in evidence.

The Court: They may be admitted over objection.

(Government's Exhibits 334 and 335 read by Mr. Kramer.)

Mr. Isseks: Your Honor, I would like to have marked at this time Government's Exhibit 336, a photostatic copy of original agreement dated September 19, 1933, between Whitall-Tatum Company and Hartford-Empire Company, which purports to be signed by Roger M. Eldred, general manager, on behalf of Hartford, and by Mr. Tatum on behalf of Whitall-Tatum Company. Attached to the agreement there is a receipt dated October 3, 1933, signed by Mr. Tatum. The receipt purports to show that in lieu of 10 monthly installments, aggregating $100,000.00, there was paid $99,000.00 in full payment of the $100,000.00 in notes. I offer both documents in evidence, the agreement and the receipt, as one exhibit.

The Court: They may be admitted over objection.

[fol. 2330] (Said agreement and receipt marked Government's Exhibit 336.)

I would like to offer as the next exhibit, an agreement relating to Whitall-Tatum Company forming-machine rights, dated September 26, 1933, seven days after the previous exhibit. It is between the Hartford-Empire Company and Owens-Illinois Glass Company. It is a photostatic copy of an original, and purports to be signed by the witness as president of Hartford, and by C. B. Belknap as vice-president of Owens-Illinois.

Q. I ask the witness whether he identifies his signature? A. I do.

Mr. Isseks: Attached to the agreement, which is four pages, is a copy of the agreement of the same date between Hartford and Whitall-Tatum, of September 19, 1933; and also attached to the documents that have been furnished us are three copies of letters, one of January 17, 1934, from Mr. C. B. Belknap to Mr. Safford, a reply of January 23, 1934, from Mr. Safford to Mr. Belknap; and a further letter of January 25, 1934, from Mr. C. B. Belknap to Mr. Safford. I offer the documents which were furnished us, bound, as one exhibit.

The Court: It may be admitted over objection.

(Said papers marked Government's Exhibit 337.)

Mr. Isseks: Your Honor, briefly, these two agreements, the last two Government Exhibits, are as follows: the first one relates to the purchase of the Headley & Thompson application for $200,000.00, $100,000.00 in cash and 10 notes [fol. 2331] of $10,000.00 each, payable in ten installments. There is a receipt showing the second $100,000.00 was paid on October 3, in the form of $99,000.00 in cash, in lieu of $100,000.00 in notes.

The second agreement provides for the payment of Owens to Hartford of one-half of the consideration, namely $100,000.00. Hartford granted Owens certain rights in respect of the Whitall-Tatum patents.

Now, Your Honor, at this time I would like to have marked, a letter which is not in Your Honor's book, and which we didn't tell counsel about; we located it only today; it is a letter dated October 17, 1933, from Lynch Corp., by T. C. Werbe, president, to Fairmont Glass Works. It is stipulated by Lynch Corp. as a genuine document from their files.

(Marked Government's Exhibit 338.)

Mr. Isseks: I offer it in evidence. Counsel for Hartford tells me it is in their stipulation. I am wrong when I said it was from Lynch's. I knew I got it from one of the gentlemen. Mr. Wall tells us it is from the Hartford files.

The Court: It will be received over objection.

Q. I would like to ask one question: in October, 1933, the Fairmont Glass Works was not a licensee of your Company, was it?

A. I cannot remember. Whatever the record shows.

Q. It was one of those who came in very late?

A. It came in early in '34 or the last of '33.

[fol. 2332] Q. You cannot fix the exact time?

A. No, I do not.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 338 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked another exhibit which is not in Your Honor's book, which we didn't tell counsel about. It is a letter dated October 30, 1933, from Hartford-Empire Company A. T. Safford, Jr., secretary, to Mr. T. C. Werbe. It is stipulated by Lynch Corp. as a copy of a genuine document. I offer that in evidence, Your Honor.

By the Court: It may be admitted over objection.

(Government's Exhibit 339 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 340, an amended agreement between Hartford-Empire Company and Lynch Corp., relating to forming machines. It purports to be signed by Roger M. Eldred, vice-president of Hartford-Empire Company, and by Mr. Werbe as president of Lynch Corp. The date is November 12, 1938. It has been furnished us by the Lynch Corp.

The Court: Is there some stipulation with reference to it?

Mr. Isseks: It was furnished us by the Lynch Corp., I think yesterday or the day before, as a true copy of the original document.

* * * * * * *

[fol. 2333] The Court: You may have your objection. It will be admitted.

* * * * * * *

[fol. 2334] Mr. Isseks: I would like to go back to a different subject-matter, namely the Hartford relationship with Corning.

Q. Now, you remember under the 1922 contract with Corning, Corning was given certain fields of ware, isn't that so?

A. That is true.

Q. And your company was given certain fields of ware?

A. That is true.

Q. Now, generally, what was your understanding of the division of fields of ware?

A. Well, Corning Glass Works was what you might call a specialty house. They weren't in the general container field, and they had developed—had a large business in bulb, tubing, cane, Pyrex ware, signal ware, optical ware, and so forth.

Q. And your licensees were not permitted to use the Hartford equipment in the fields of ware which were given to Corning?

A. No, because our licensees weren't making those articles.

Q. Suppose they wanted to; couldn't they use the machinery?

A. No. We gave Corning Glass Works exclusive rights in those special articles.

Q. And, occasionally, some of your licensees did want to [fol. 2335] use, did they not, the equipment in the fields of ware given by you exclusively to Corning?

A. I think there were some such occasions, not of a great many.

Q. There were some?

A. Yes.

Mr. Isseks: I would now like to have marked a letter dated January 7, 1926, from the witness to one G. K. Fry, of the H. C. Fry Glass Company, with indications on the copy I have, "Copy for Mr. Falck". It has been stipulated as genuine by Corning Glass Works.

The Court: That is 1-7-26?

Mr. Isseks: Yes.

Q. I ask you, Mr. Smith, whether you wrote that letter?

A. I have no reason to doubt it.

(Said letter marked Government's Exhibit 341.)

Mr. Isseks: I offer that in evidence.

The Court: It will be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 341 read by Mr. Lewis.)

Mr. Isseks: At this time I would like to have marked as the next Government's Exhibit, a letter dated February 11, 1926, from the witness to Mr. Falck, with one enclosure. The copy of the letter that we have—not the enclosure—has been stipulated as genuine by Corning.

Q. I ask the witness whether he wrote that letter to Mr. Falck?

A. (After examining same.) I think I did, yes.

[fol. 2336] (Said letter marked Government's Exhibit 342.)

Mr. Isseks: I offer that in evidence.
The Court: It may be admitted over objection.

(Letter read by Mr. Kramer.)

Mr. Isseks: At this time I would like to have marked a copy of a letter dated February 17, 1926, from Mr. Falck to Mr. Smith in reply to the letter that has just been read. It has been stipulated by Corning as a copy of the genuine document, and I am not going to ask the witness any questions. I offer it in evidence.
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have it read.

(Said Government's Exhibit 343 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 344, copy of the memorandum dated February 20, 1926, which has on the top of it, "Memorandum to F. G. Smith on Mr. Falck's letter of February 17, 1926." This copy that we have has been stipulated as a genuine document from the files of Corning Glass Works. I offer that in evidence, Your Honor.
Mr. Sayles: That is by whom?
Mr. Isseks: By Mr. Knox Smith.
Mr. Haight: I take it this comes within the category of those exhibits or memoranda of Knox Smith which Your Honor admitted in evidence. I shall not repeat my objection further than to bring that to Your Honor's attention.
Mr. Isseks: I wish to point out it was found in the files of Corning.
[fol. 2337] The Court: It may be admitted over objection.
Mr. Sayles: May it be limited, if Your Honor please, to the ideas of Mr. Knox Smith, rather than anything he says as to others?
The Court: It may be so limited.

(Said Government's Exhibit 344 read.)

Mr. Haight: I don't think that does come within the category. We withdraw our objection to it. It is advice of defendant's counsel; I think that is admissible.
Mr. Isseks: I would like to have marked as the next Government's Exhibit, a letter dated February 12, 1926, from

the witness to Mr. Falck. It has been stipulated as a genuine document from the files of Corning.

(Marked Government's Exhibit 345.)

Q. Mr. Smith, I ask you whether you wrote that letter to Mr. Falck? I show you photostat of the letter and I ask you whether that is your signature on the letter.
A. It is.

Mr. Isseks: With counsel's permission I will substitute the photostat for the other exhibit. I offer that in evidence.
The Court: It will be admitted over objection.

(Government's Exhibit 345 read by Mr. Kramer.)

Q. It is difficult to read the photostat. Do you recognize the handwriting on the photostat, on the bottom of it?
A. I think that is Mr. Falck's, but this is not Mr. Falck's.

Mr. Isseks: The witness points to the line which says, [fol. 2338] "Ware Division "B" exclusive assignable and divisible royalty 60% of normal."

Q. That looks like Mr. Falck's?
A. Yes.
Q. The rest you don't recognize?
A. No.

Mr. Isseks: I will not offer the bottom part at this time.
Mr. Middleton: It is understood this is subject to objection, Your Honor?
The Court: Yes. It will be admitted over the objection.
Mr. Isseks: At this time I would like to have marked as the next Government's Exhibit, copy of letter dated February 18, 1926, written by Mr. Falck to the witness, and certified as a true copy by the Corning Glass Works.

(Marked Government's Exhibit 346.)

Mr. Isseks: When I say it is written by Mr. Falck, I assume it is because it is signed "President". If it is not Mr. Falck it is some other gentleman at Corning who was president at that time. I offer the document in evidence.
The Court: It may be admitted over objection.

(Government's Exhibit 346 read by Mr. McCracken.)

Mr. Isseks: Your Honor, I would like to have marked as Government's Exhibit 347, a letter dated April 17, 1926, from the witness to Corning Glass Works, attention of [fol. 2339] Mr. W. H. Curtiss, stipulated by Corning as to genuineness.

Q. I ask the witness whether he wrote that letter to Mr. Curtiss?

A. (After examining same.) I have no reason to doubt it.

Mr. Isseks: I offer that in evidence.

The Court: It may be admitted over objection.

(Government's Exhibit 347 read by Mr. Kramer.)

Mr. Isseks: At this time I would like to have marked the reply, as Government's Exhibit 348, dated April 19, 1926, from Mr. Curtiss to the witness, stipulated as a genuine document by Corning.

Q. Did you receive that letter, Mr. Smith?

A. There is no reason to doubt it.

Mr. Isseks: I offer that in evidence.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 348 read by Mr. McCracken.)

Mr. Isseks: At this time I would like to have marked, a copy of a letter dated April 28, 1927, addressed to Corning Glass Works, attention Mr. W. H. Curtiss, signed Hartford-Empire Company by E. O. Hiller, stipulated as to genuineness by Corning Glass Works.

Q. Mr. Smith, who was Mr. Hiller?

A. Mr. Hiller is one of our engineers.

Q. At that time?

A. And still is.

Mr. Isseks: I offer that in evidence.

The Court: It may be admitted over objection.

[fol. 2340] Mr. Isseks: I would like to have it read.

(Said Government's Exhibit 349 read by Mr. Lewis.)

Q. Do you know whether or not the Corning people sublicensed the Indiana Glass people?

A. I think they gave us consent to do so, and we licensed them to make the ordinary automobile lenses, made out of ordinary glass.

Q. Macbeth & Evans, referred to in this letter, later on became a part of Corning, did it not?

A. That is correct.

Mr. Isseks: At this time I would like to have marked, a letter dated May 19, 1926, from the witness to George H. Gerwig and W. H. Green, receivers, H. C. Fry Glass Company. The copy we have shows it is a copy from Mr. Curtiss and has been stipulated as a genuine document from the files of Corning Glass Works.

Q. I ask the witness whether he wrote that letter?

A. I have no reason to doubt it.

Mr. Isseks: I offer that in evidence.

The Court: It may be admitted over objection.

(Letter marked Government's Exhibit 350 read by Mr. Kramer.)

Q. The Hemingray Company was referred to before, I believe, was it not?

A. Yes, one of the original Tucker, Reeves and Beatty licensees.

Q. Was that company in the business of manufacturing a particular type of colored bottles?

[fol. 2341] A. Well, their main business, as I remember it, was insulator business, made of line glass, and also they may have had some bottle rights, bottles to be made out of green glass, or something; I think it was green glass.

Q. Were they ever known as what sometimes is called in the industry a "disturbing factor"?

A. Well, they probably had their turn at it; almost everybody had.

Q. What was your understanding of a "disturbing factor" in the glassware business?

A. Well, I would put it this way, that if certain orders were taken by certain people at certain times and at a very low figure or below cost, or the ware was poor, why, probably they would be called "disturbing factors".

Q. Or colloquially known as "price-cutter"?

A. Yes, that is one way of putting it, but there are many other ways of putting it.

Q. And during the NRA called "chiselers"?

A. I think that name came into being during the NRA.

Q. But when you referred to a "disturbing factor" you meant what is said a "price-cutter"?

A. I might have, of course, I don't know what you are talking about.

Q. I have got my hands behind my back.

Mr. Isseks: Your Honor, at this time I would like to have marked, a letter dated July 13, 1926, from the witness to Mr. Falck, stipulated as a genuine document by Corning Glass Works.

[fol. 2342] Q. I ask you, Mr. Smith, whether you wrote that letter to Mr. Falck?

A. I think I wrote that letter.

Mr. Isseks: I should like to have it read, please.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 351 was read to the Court by Mr. McCracken, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 352 what purports to be a letter agreement dated October 3, 1927, written by the witness on behalf of Hartford-Empire Company to Corning Glass Works; and marked in the lower left hand corner, "Accepted by Corning Glass Works, by Alexander D. Falck, President". It is stipulated by Corning as a copy of a genuine document.

Q. I ask the witness whether he signed the original of that document on behalf of Hartford?

Mr. Sayles: Are you introducing a signed agreement?

Mr. Isseks: It is Item No. 418 of the Stipulation.

Mr. Sayles: What we have is not signed; but this is.

Mr. Isseks: Is it all right?

Mr. Sayles: Yes. All we had was this blueprint.

The Court: That is a letter of October 3, 1927?

Mr. Isseks: Yes, Your Honor. The copy we have marked is a copy certified as a true copy by Corning, and stipulated [fol. 2343] in Item No. 418 of the Stipulation as a copy of the genuine document.

The Court: All right.

Mr. Sayles: It goes in over objection?

The Court: Yes.

Mr. Isseks: There is no question about authenticity, is there, Mr. Sayles?
Mr. Sayles: Oh, no.
The Witness: Yes, I think I signed that.
Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 352 was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, I should like to have marked at this time as Government's Exhibit No. 353 a letter dated May 27, 1929, from the witness to Mr. W. H. Curtiss, stipulated as a genuine document by Hartford.

Q. I ask you, Mr. Smith, whether you wrote that letter to Mr. Curtiss?
A. I have no reason to doubt that I did.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 353 was read to the Court by Mr. Kramer, of counsel for the government.

(Afternoon recess.)

The Court: Proceed.
Mr. Isseks: Your Honor, at this time I should like to have marked as the next exhibit, Government's Exhibit [fol. 2344] No. 354, a letter dated October 26th, 1929, from Mr. Curtiss to the witness. I ask you, Mr. Smith, whether you received that letter in the regular course of business?
Mr. Isseks: Judge Haight says it comes from their files; and with that statement, Your Honor, I offer the document in evidence.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 354 was read to the Court by Mr. McCracken, of counsel for the government.

Q. You received that letter, did you not?
A. I think I did.

Mr. Isseks: Your Honor, at this time I should like to offer three documents: the first one is Government's Exhibit No. 355, a letter dated June 15, 1931, from the McKee

Glass Company, by Mr. M. A. Smith, to Hartford-Empire, attention F. Goodwin Smith;

As Government's Exhibit No. 356, a reply dated June 22, 1931, from Hartford, apparently signed A. M. Pease, to the McKee Glass Company;

As Government's Exhibit No. 357, a letter dated July 2, 1931, from Mr. Curtiss to Mr. Pease, referring to the subject matter of the prior letters.

The three documents, Your Honor, have been stipulated as to genuineness by the Corning Glass Works.

The Court: What is the letter of July 2nd?

Mr. Isseks: From Mr. W. H. Curtiss to Mr. Pease. Hartford have copies in their files.

[fol. 2345] Mr. Haight: We have not found the first one; we have found the other two.

Mr. Isseks: You have Government's Exhibits Numbers 356 and 357?

Mr. Haight: Yes.

Mr. Isseks: I offer the three of them in evidence.

The Court: They may be admitted, over objection.

Thereupon, Government's Exhibits Nos. 355, 356, and 357 were read to the Court by Mr. Lewis, of counsel for the government.

Mr. Middleton: May I inquire whether there are longhand notes appearing on the exhibits used?

Mr. Isseks: Not the ones that I have.

At this time, Your Honor, I should like to offer as Government's Exhibit No. 358 a memorandum dated July 28, 1931, to Mr. Houghton; carbon copies to Messrs. Green, Hostetter, Peden, and G. W. Cole; from Mr. W. H. Curtiss; and it has at the top: "Subject: Request of Macbeth Evans for Right to Use Hartford-Empire Feeder on certain Heat Resistant Articles". It is stipulated by Corning as a genuine document, Item No. 663.

The Court: Stipulated as genuine?

Mr. Isseks: Yes, Your Honor, by Corning.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 358 was read to the Court by Mr. McCracken, of counsel for the government.

[fol. 2346] Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 359 a letter, which Your Honor does not have a copy of—here is a copy right here—it is July 29, 1931, from McKee Glass Company, by Mr. M. A. Smith, President; to Mr. Curtiss; stipulated as genuine by Corning.

I should like to have marked as Government's Exhibit No. 360 a reply, which I hand you a copy of, dated August 12, 1931, from Mr. Curtiss to Mr. M. A. Smith, President, McKee Glass Company. This document, too, has been stipulated as to genuineness by Corning.

I offer both documents in evidence.

The Court: They may be admitted, over objection.

Thereupon, Government's Exhibits Numbers 359 and 360 were read to the Court by Mr. Lewis, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 361 a letter dated June 6th, 1932, from the witness to Amory Houghton; stipulated as to genuineness by Corning. Mr. Wall says that they have a copy in their files. I offer the document in evidence.

The Court: It may be admitted, over objection.

Mr. Sayles: Note an objection, if Your Honor please.

Thereupon Government's Exhibit No. 361 was read to the Court by Mr. McCracken, of counsel for the government.

[fol. 2347] Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 362 a letter dated October 12, 1932, from the witness to Mr. Curtiss, Vice-President of Corning Glass Works, certified as to genuineness by Corning. Mr. Wall told me a few seconds ago that they have a carbon copy in their files. I offer the document in evidence.

The Court. It may be admitted, over objection.

Thereupon, Government's Exhibit No. 362 was read to the Court by Mr. Kramer, of counsel for the government.

Q. McKee finally got a license, did it not?

A. Oh, yes, they were licensed on two single feeders.

Q. Did they ever get a license in the field of ware they were asking for, which was the basis of your letter?

A. That I don't remember. The record will show, Mr. Isseks.

Q. I am told they got a license on certain Corning machines, and not on the Taylor & Sullivan machine?

A. I am not sure of my facts at all; but I think Corning gave McKee rights under the Corning patents.

Q. Composition rights?

A. Yes. You will have to ask Corning. I think there were some extensions, but what, I cannot tell you, Mr. Isseks.

Q. Mr. Smith, do you remember we have had testimony here after the 1932 contracts with Owens and Hazel, there were other manufacturers of glassware that became licensees of Hartford?

A. That is correct.

[fol. 2348] Q. But there were still some that stayed out at the end of 1933, were there not?

A. That is true.

Q. One of those was one of the largest of the smaller manufacturers, namely, Fairmont?

A. They were one of the last to come in.

Q. Do you remember that before they came in Mr. Rau, who was the head of that company, said they would have to have certain rights to use your equipment for fields of ware that were assigned to Corning?

A. No. I did not personally handle those negotiations. I think I met Mr. Rau once, but most of the negotiations were carried on, I think by Mr. Eldred and Mr. Pease, who went out to Indianapolis.

Q. Did they tell you about the problem that Rau wanted certain rights that were in Corning's field?

A. I don't happen to remember them.

Q. Don't remember them at all?

A. No.

Mr. Isseks: At this time I would like to have marked two photostats, one dated May 3rd, 1934, it is not in Your Honor's book. It is from Hartford-Empire Company by S. F. Parham, to Mr. Curtiss. It is stipulated as genuine by Corning. This is Exhibit 363. And the other one is dated May 3rd, 1934, same date, from Hartford-Empire Company, by Arthur T. Safford, addressed to Corning Glass Works, Exhibit 364.

[fol. 2349] The Court: They may be admitted, over objection.

Mr. Hayward: Exception.

(Mr. McCracken reads Exhibit 363.)
(Mr. McCracken reads Exhibit 364.)

Q. Mr. Smith, what was the Kucera Feeder?

A. Well, it was some form of air feeder that Underwood had and we took over from Mr. Underwood, of Knox Glass.

Q. Is it still being used by anybody, commercially?

A. Not that I know of.

Q. Mr. M. A. Smith, of the McKee Company, is no longer alive, is he?

A. I think not.

Q. When you gave McKee additional rights later on you gave them feeder rights in connection with a headlight lens, did you not?

A. I would not know.

Q. You did not give them any rights in connection with heat resisting ware?

A. We would have no right to do that.

Q. Don't you remember the Corning people had certain composition patents for the making of a particular kind of glass called Pyrex?

A. Oh, yes.

Q. They gave McKee certain rights in connection with these Pyrex patents?

A. I think they did.

Q. You know, do you not, that those patents, composition patents, expired somewhere in 1936?

[fol. 2350] A. Somewhere along there.

Mr. Isseks: At this time I would like to have marked four pieces of paper which are not in Your Honor's book, letter dated January 25, 1937, from the Indiana Glass Company, by its president, addressed to Hartford-Empire Company, attention Mr. Pease, Exhibit 365.

The next one is dated February 5, 1937, copy to Mr. Peden. In case of 365 there was also indication of copy to Mr. Peden. The second one is dated February 5, 1937, from the Indiana Glass Company to Hartford-Empire Company, attention Mr. Pease; both from the same people, different dates. One is January 25, 1937. The other is February 5, 1937, Exhibit 366.

The next one, Exhibit 367, is dated February 9, 1937, from Mr. Pease to Mr. Gaunt, president Indiana Glass Company. I am handing copies to counsel for Hartford and counsel for Corning.

The next one, Exhibit 368, is dated February 9, 1937, from Mr. Pease to Mr. James L. Peden, sales manager Corning Glass Works.

Exhibits 365 to 368, inclusive, have been stipulated by Corning Glass Works as to genuineness. I offer the four exhibits in evidence. They relate to the same subject matter.

The Court: They may be admited, over objection.
(Mr. Kramer reads Exhibit 365.)
(Mr. Kramer reads Exhibit 366.)
(Mr. McCracken reads Exhibit 367.)

(Mr. McCracken reads Exhibit 368.)
[fol. 2351] Mr. Middleton: Your Honor, may we again register our objection to these four exhibits, 365 to 368, inclusive, for two reasons: First, the obvious one, they have no relation whatever to Owens-Illinois; and for the further reason they are as of 1937, which is two years after the cancellation of the agreement between Hartford and Owens, which was cancelled September 30, 1935.
The Court: You may have your objection.

Q. Do you know whether or not Corning gave Indiana the rights it asked?
A. No. I do not know.
Q. Do you remember after the so-called Composition Pyrex Patents expired Mr. I. J. Collin, the gentleman that we referred to yesterday, said that his company was going to go into the manufacture of Pyrex glass on Hartford feeders?
A. Yes.
Q. Do you remember having some talks with him about that matter?
A. Yes.
Q. Tell us what happened, please?
A. Well, Mr. Collins was anxious to use our equipment for baking ware and cooking utensils and cooking ware. That we could not give him because we had already given Corning the exclusive rights for baking ware which they held regardless of whether they had a composition patent or not. So we referred Mr. Collins to Corning.
[fol. 2352] Q. Did you have some talks with Mr. Collins?
A. I think on several occasions the matter was discussed. We told them we were very sorry it was out of our control, we have sold the exclusive rights to the Corning Glass Works of baking ware, and therefore we had nothing to give.

Q. Mr. Collins at that time was still a director of your company, was he not?

A. Well, I think so. Mr. Collins got off our Board I think in '38. I would like to have it checked.

Q. That is all right; whatever the date is. But you were seeing him quite frequently, were you not?

A. I would not say quite frequently. Off and on.

Q. Mr. Collins got rather emphatic in his requests?

A. Yes. He felt he wanted to go in the baking ware field and he felt we ought to help him get there.

[fol. 2353] Q. As a matter of fact, he made some baking ware on your equipment; he said he did?

A. He may have made some samples but he did not go into the market.

Q. Now, about that time you were having some difficulty —by "you" I mean Hartford—with Mr. Collins' company with respect to forming machines, were you not? I am talking about '37.

A. No. I do not remember any particular difficulty.

Mr. Isseks: I want to make sure the gentleman I call I. J. Collins is colloquially referred to as "Ike".

Q. Is that right, he is referred to as Ike, is he not?

A. Yes.

Mr. Isseks: At this time I would like to have marked a letter dated November 20, 1937, signed "Goodwin", addressed to Mr. Amory Houghton, stipulated as genuine by Corning and marked Exhibit 369.

Q. I will ask the witness if he wrote the letter?

A. Yes. I think I wrote that letter.

Mr. Isseks: If Your Honor please, I offer that letter but not the postscript.

The Court: It may be admitted.

Mr. Sayles: May it be limited to the hearsay part?—I think it ought to be taken as evidence as to what Eldred and Pease told——

Mr. Isseks: We will ask Mr. Eldred or Mr. Pease or Mr. Collins what was said, for the purpose of finding out what the words "ugly mood" mean.

[fol. 2354] Mr. Sayles: I object.

Mr. Isseks: We are offering it to show the state of mind of Hartford. It came from the files of Corning, but I will offer it against Hartford and any other corporation or person Your Honor finds was a conspirator at that time, but solely for the state of mind of the defendant Goodwin Smith and the defendant Hartford-Empire.

Mr. Middleton: We wish our special objection because of the date.

The Court: You may have it. It will be admitted over objection.

(Mr. Lewis reads Exhibit 369.)

Q. Now, Mr. Smith, does the last paragraph refresh your recollection that you were having some—let's say—difficulties, with Mr. Collins in regard to a forming machine?

A. No. The only thing I can remember, Mr. Isseks, was that they tried out a forming machine of their own which came under our patent. Nothing was done about it and I don't even know whether they are using those machines.

Mr. Isseks: Your Honor, at this time I would like to have marked, a copy of a letter dated November 24, 1937, from the witness to Mr. Houghton, Exhibit 370. I understand the enclosure has been located and it is being photostatted and will be here tomorrow.

Q. I will ask you, Mr. Smith, whether you wrote that letter?

[fol. 2355] Counsel: I gave it to Mr. Lewis at lunchtime.

Mr. Isseks: We have it but I haven't got it here in the court room.

A. If I did I don't remember, but I don't doubt it.

Mr. Isseks: It has been stipulated as genuine from Corning.

The Court: It may be admitted over objection.

(Mr. Isseks reads Exhibit 370.)

Mr. Middleton: Is the memorandum to be attached offered as part of this exhibit?

Mr. Isseks: I will offer them separately. I got it now. It was just handed to me.

I now offer memo of November 24, 1937, to F. Goodwin Smith, from A. T. Safford, Jr., subject, permitted ware. It is referred to in the previous exhibit 370. This is marked 371.

The Court: It may be admitted over objection.

Mr. Isseks: Your Honor, before I have this read I would like to have another document marked. I would like to have marked, letter dated December 6, 1937. It is addressed to Mr. Amory Houghton, signed "Bunn", stipulated as a genuine document by Corning Glass Works, and so there won't be any dispute about it, Your Honor, I offer the copy of the carbon copy which was mentioned by Mr. Martin, at least it was furnished to TNEC, it has a certificate,—"I certify this is a true copy of the original in the records of this company, E. F. Martin, Asst. Treasurer, Owens-Illi- [fols. 2356-2357] nois Glass Company."

I offer both documents as one exhibit so there won't be any dispute as to where they came from, as Exhibit 372.

Mr. Middleton: You are offering both as one exhibit?

Mr. Isseks: That is right. We will mark them 372 and 372-A.

Q. Mr. Smith, who is the gentleman at Owens known as "Bunn"?

A. Mr. C. B. Belknap.

Q. In 1937 he was vice-president, was he not, so far as you knew,—of Owens?

A. I think so.

Mr. Isseks: I offer it in evidence.

Mr. Emery: Objection.

The Court: It may be admitted over objection.

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[fol. 2358] Mr. Haight: Your Honor will recall yesterday an Exhibit 326 was offered and not identified as to authorship. We said we would ascertain whether it had been pre- [fol. 2359] pared by Mr. Safford, and if so advise Your Honor so that the instrument could be dealt with accordingly. It was prepared by Mr. Safford.

Mr. Isseks: Thank you very much. In view of the concession made by counsel I now offer the document in evidence for the limited purpose.

The Court: It may be admitted over objection. That is 326?

Mr. Isseks: That is right. I would like to have it read.

(Government's Exhibit 326 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 373, a letter dated December 8, 1937, from Mr. Amory Houghton to Mr. Smith, the witness. It is stipulated it is a copy of a genuine document by Corning.

Q. I ask you whether you received that letter in acknowledgment of the letter which was offered yesterday, in which you sent Mr. Houghton Mr. Safford's memorandum on the question of Hocking Glass rights?
A. I have no reason to doubt it.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted over objection.
Mr. Isseks: All the letter does is acknowledge receipt of the letter of December 24th, enclosing Mr. Safford's memorandum. At this time I would like to have marked, a memorandum dated December 9, 1937, written by E. D. LaFollette, to Dr. Sullivan, with carbon copy to Mr. Houghton and [fol. 2360] others, to Corning, as indicated. It is stipulated by Corning as a copy of a genuine document. That will be Government's Exhibit 374. I offer it in evidence, Your Honor.

* * * * * * *

The Court: Just offered for the limited purpose, I assume?
Mr. Isseks: Yes, Your Honor.
The Court: It may be admitted over objection.

(Government's Exhibit 374 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to mark an interoffice communication from Mr. Peden to Mr. Houghton, subject, "Feeder license for Hocking Glass Co.", [fol. 2361] dated March 11, 1938, certified as a genuine document by Corning, offered for the limited purpose, Your Honor.
Mr. Sayles: Same objection.
The Court: It may be admitted over objection.
Mr. Fuller: If Your Honor please, I haven't had an opportunity as yet to read the letter. I would like to reserve the right to state specific grounds of objection, if they occur to me after I have had an opportunity to read it. I have no objection to Mr. McCracken going ahead.

The Court: You may have that right.

Mr. Haight: May this be made clear: I am not entirely sure—Mr. Sayles just objected to this particular document, and Your Honor said it was admitted over objection. I have been going on the assumption, which I think is correct, that when a document is introduced that is not directly connected with one of the defendants, that there is a general objection.

The Court: General objection on materiality.

Mr. Haight: On behalf of all the other defendants?

The Court: That is right. That is the reason I make that reservation. You may proceed.

(Government's Exhibit 375 read by Mr. McCracken.)

Mr. Middleton: May it please Your Honor, I wish to place of record the objection of Owens, together with a motion to exclude the three exhibits, 373, 374 and 375, and that the testimony with respect to them be stricken, so far as Owens is concerned, because of the dates, all of this happening subsequent to September 30, 1935. And would it be [fol. 2362] proper, Your Honor, to have a running objection, without specifically stating it each time, to any evidence or any exhibits offered having the date subsequent to September 30, 1935?

The Court: Will counsel agree to that?

Mr. Middleton: Understanding it is on the ground any relationship between Owens and Hartford, whatever it was before that, was terminated at that time. At least that is the basis of our objection.

Mr. Isseks: I have no objection, provided it is understood we disagree with counsel.

The Court: Very well.

Mr. Middleton: Well, we understand that.

Q. Now, Mr. Smith, do you know whether or not Corning ever gave any right to Hocking to make so-called heat-resisting ware?

Mr. Sayles: We object as incompetent, immaterial and irrelevant, if Your Honor please.

Mr. Isseks: If he knows, Your Honor.

Mr. Sayles: It is not a question of his knowledge, it is a question of materiality.

The Court: He may answer if he knows.

Mr. Sayles: Exception.

A. Not that I know of.

Q. Now, Mr. Smith, not only was Corning interested in making some type of heat-resisting ware, but Owens was interested, was it not, in making heat-resisting ware?

A. Well, I think there was a time when Owens Company [fol. 2363] would have been glad to get a license.

Q. I am talking of after the expiration of the so-called composition Pyrex Patents in 1936, that is what I am talking about.

A. Yes.

Q. Do you remember that?

A. Yes.

Q. Don't you remember that Owens wanted the right to make various kinds of heat-resisting ware, and, more particularly, insulators?

A. I think that question came up, Mr. Isseks.

Q. Don't you remember Mr. Lewis talked to you about it?

A. Probably did.

Q. See if I cannot refresh your recollection. Don't you remember that the problem with Owens was a little different than the problem with Hocking, because Owens had certain rights under the Tucker, Reeves and Beatty patents?

A. Yes, that is true.

Q. And those rights were unrestricted, were they not?

A. Yes, the particular Tucker, Reeves and Beatty patents —Owens had particular rights under those patents.

Q. Because they paid half of the price?

A. That is correct.

Q. They paid half of the purchase price, which was $800,000, and their rights under it were very free?

A. That is quite correct.

Q. Don't you remember Mr. Levis said, "If we cannot go ahead and use the Hartford feeder to make heat-resisting [fol. 2364] ware in some form, we will go ahead and use the Tucker, Reeves and Beatty machine"?

A. I remember that whole question came up.

Q. Tell us what happened. We were not there. I am sorry I have to ask leading questions; it makes it difficult for me. Just tell us what happened.

A. I cannot tell you any more than that, that the question came up, the question of what rights they had under the Tucker, Reeves and Beatty patents, and the question as to whether they would go ahead and make—I think it was insulators——

Q. Yes?

A. ——under those patents.

Q. What did they do?

A. I don't think they ever went ahead and did it.

Q. Did Corning ever give them the right to use your equipment—I am talking about Hartford feeders—to make heat-resisting ware of any kind?

A. Not that I remember.

Q. Did you have a conference with Mr. Levis and Mr. Houghton about the whole matter?

A. I think probably I did.

Q. What happened at the conference?

A. Well, I don't remember whether a conference where both Mr. Houghton and Mr. Levis were present, but I unquestionably took it up with Mr. Houghton, either verbally or by letter, and I unquestionably took it up with some of the Owens representatives, either verbally or by letter.

[fol. 2365] Q. Do you know whether Mr. Levis and Mr. Houghton ever had any conversation about the matter?

A. I actually don't know.

Q. You do know this, that Owens, as far as you know, never used your equipment for making insulators, heat-resisting insulators?

A. I think that is true.

Q. As far as you know they never built Tucker, Reeves and Beatty machines for the purpose of making heat-resisting insulators?

A. No; they had Tucker, Reeves and Beatty feeders operating.

Q. Did they ever use them for making the heat-resisting ware insulators, as far as you know?

A. To the best of my knowledge, no.

Q. Don't you remember, as a part of the discussion, you, Hartford, were worried for fear Owens might make Tucker, Reeves and Beatty feeders for the purpose of making bottles?

A. Well, they were using some of those feeders for some time; I think bottles were made. But Hemingray was operating Tucker, Reeves and Beatty feeders and making them, and I said yesterday that Corning Glass——

Q. I am talking about Owens. Do you know whether they used them?

A. For making bottles?

Q. Yes.

A. I think not.

Q. Now, just for a preliminary question: You have testi- [fol. 2366] fied that some time 'way back in '25 or '26, W. J. Belknap, the brother of C. B. Belknap, represented your company?

A. In suits, yes.

Q. Since then you said they represented your company generally?

A. That is correct.

Q. Do they represent Corning?

A. Not as far as I know.

Q. Corning has their own lawyers?

A. Yes.

Mr. Isseks: I would like to have marked, a letter dated February 7, 1938, from the witness to Amory Houghton, certified as a genuine document by Corning, a 2-page letter. It relates to Owens. So there won't be any misunderstanding, there are two letters of the same date. We are only offering one. This letter relates to Owens. There is one of the same date that relates to Hocking; we are not offering it.

Q. I ask you whether you wrote that letter. (Government's Exhibit 376.)

A. Yes, I wrote that letter.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 376 read by Mr. Lewis.)

Q. The Belknap referred to in the letter, when you just say "Belknap" is Mr. C. B. Belknap?

[fol. 2367] A. I think so.

Q. Mr. W. J. Belknap—You wouldn't say Mr. W. J. Belknap was "scheming"?

A. I think that was C. B. Belknap.

Mr. Isseks: Your Honor, at this time I would like to have marked, the two enclosures, both dated February 5; the first one, copy we received from Corning, is two pages, February 5, 1938; it is on their letterhead, purports to be,—

beginning, "You have asked whether Owens," Government's Exhibit 377.

Government's Exhibit 378 from Mr. W. J. Belknap to the witness, and the copy I have here was furnished us by Corning, stipulated to be a genuine document. It is the same date, from W. J. Belknap to Mr. Smith, one page, and starts, "I am a little disturbed". That, too, is stipulated by Corning as a copy of a genuine document.

I offer both exhibits in evidence, 377 and 378.

The Court: They will be received over objection.

(Said Exhibits 377 and 378 read by Mr. Kramer.)

Q. If Owens made bottles on a Tucker, Reeves and Beatty machine, would they have had to pay your company royalties?

A. Oh, yes.

Q. They would have?

A. Yes. Now let me see——

Q. I am talking about 1938.

A. If that particular feeder didn't come under any of Hartford's patents, why, then, I think Owens would not have had to pay Hartford royalty.

[fol. 2368] Q. Now, Mr. Smith, under this 1922 contract between your company and Corning and Empire Machine Company, you have testified yesterday there was a division of fields. Now, that contract, which is Government's Exhibit 19, also gave each of the parties rights as to new inventions, did it not?

A. For the particular fields.

Q. In other words, if your company developed a new machine, Corning would have been entitled to an exclusive right in the particular field?

A. That is correct.

Q. And, similarly, if Corning or Empire Machine developed a new machine, your company was entitled to an exclusive right in your particular field?

A. That is correct.

Q. But of course you would have to pay royalty, would you not, to each other?

A. Yes, that is correct.

Q. Do you remember a time came when your chief engineer, Mr. Peiler, developed a machine, or, rather, obtained a patent on a machine known as the Peiler-Punty Patent?

A. Yes, that was one of his very earliest developments.

Q. And he applied in 1914 and the patent issued in 1926?
A. I don't remember the date.

Mr. Isseks: Counsel advise me it is 1912.
Mr. Haight: That is what Col. Brown says.
Mr. Isseks: Applied for in 1912 and issued in 1926.

Q. Now, that particular patent related to a machine [fol. 2369] which could be used for tubing and cane, is that not so?
A. That is so.
Q. And that was Corning's exclusive field, was it not?
A. That is correct.
Q. And Corning, of course, was entitled to an exclusive right on that patent for its field, on the payment of certain royalties, was it not?
A. Yes.
Q. Don't you remember, though, a dispute arose between Corning and yourself with regard to that patent?
A. I don't remember the dispute. I remember that they were interested in acquiring under that patent the right to pay a paid-up sum, rather than pay royalties; a paid-up sum of money.
Q. They wanted it royalty-free, they wanted to pay a lump sum and then not have to pay royalties in the future?
A. I think that is correct.
Q. Did they tell you why they wanted to pay a lump sum rather than pay fixed royalties under the contract?
A. Not that I remember. I think we were more interested in having a lump sum.
Q. See if I can refresh your recollection. Corning was a large manufacturer of tubing and cane, was it not?
A. That is correct.
Q. And, volume-wise, they might pay more over a number of years than a fixed lump sum of money; didn't they tell you that?
A. I don't remember that.
[fol. 2370] Q. In any event, you sold them the exclusive right, royalty-free, for a fixed sum of money?
A. That is correct.
Q. How much was it?
A. I think it was $350,000.

Mr. Isseks: At this time I offer a contract dated June 26, 1928, between Hartford-Empire Company and Corning Glass Works. This copy here is a copy which purports to be signed by F. Goodwin Smith. It is in the form of a license and lease agreement, and furnished us by Corning. I offer it as the next exhibit.

(Government's Exhibit 379.)

The Court: It will be admitted over objection.

Mr. Isseks: Your Honor, this contract recites, or rather, the document, the payment of $350,000 by Corning to Hartford. Hartford gives Corning, royalty-free, an exclusive right in connection with tubing and cane in respect of the particular Peiler-Punty Patent.

Q. Now, Mr. Smith, after that contract, your company, of course, had rights reserved to itself in your own field?

A. That is correct.

Q. In fact, all fields other than tubing and cane?

A. That is right.

Q. Did you ever issue any license to any of your licensees in the glass container field in respect of the Peiler-Punty Patent?

A. No. It was not adaptable to make containers.

Q. You did give licenses, did you not, to two of your [fol. 2371] licensees, namely Owens and Hazel?

A. That is right.

Q. And they were entitled to such rights, were they not, as a licensee would have in connection with the field that they were licensed in, in respect of this patent?

A. If they could have built the feeder for a container under that patent, I think they had the right to do so, but they would have to pay royalty.

Q. We understand that. Now, do you remember that a time came when Corning said they wanted rights with respect to tubing and cane on a patent known as the Soubier Patent, which related or had something to do with tubing and cane?

A. No, I don't happen to remember that.

Q. Don't you remember that?

A. No.

Q. Do you remember a time came when you discussed the matter of the right you gave to Corning under this Peiler-Punty Patent with the Owens people?

A. No, I don't happen to remember it.

Q. Maybe I can go about it in another way. Owens, of course, from 1924—April 9, 1924, until as of July 1, 1932, were entitled to 50% of the divisible income under your contract?

A. Yes, that is correct.

Q. Now, you received $350,000 from Corning in 1928. Did Owens participate in that amount of money?

A. No.

Q. May I ask why not?

A. Well, I think we assumed it was outside the contract. [fol. 2372] Q. Now, don't you remember that there were discussions between Owens and your company as to whether or not they were entitled to participate in that?

A. I think there were, Mr. Isseks.

Q. And don't you remember that you had a conference with Mr. C. B. Belknap and Mr. Carter, and Mr. Knox Smith, with regard to that matter sometime in 1930?

A. I know the matter came up and was discussed, I couldn't tell you whether it was by conference or by letter or how.

Q. I will try to refresh your collection. I show you diary entry for May 22, 1930, solely to refresh your recollection.

A. H. K. Smith diary entry?

Q. Any time I refer to diary entry it is understood it is H. K. Smith's, which raises an important question. Mr. Smith, did you ever keep a diary?

A. No.

Q. Are you sure of that?

A. I kept a little pocket diary, which says, "In court" "I went to New York", "Returned",—but no record of conferences.

Mr. Goodrich: He never will, either.

Q. Did you save these pocket diaries?

A. No—there might be a few for a year or two. I can't tell you.

Q. You haven't got them for the years 1925 to 1937, inclusive, have you?

[fol. 2373] A. No.

Q. Look at that diary entry of May 22, 1930. I am trying to refresh the witness' recollection. I understand when they say they do not object to the authenticity, it is understood they concede it was written by Mr. Knox Smith.

A. I know we had a conference, Mr. Isseks, on this matter.

Mr. Isseks: I would like to have counsel for Hartford see if they can produce memorandum referred to in the diary entry of May 22, 1930, from the file marked "O"—which I assume means Owens—"3-1".

Q. In any event, you didn't give them any money, as far as you can remember?

A. That is correct.

Q. Did you wash it out in any other way? I am using the expression used by Mr. Knox Smith in a memorandum.

A. Not that I remember.

Q. Now, going back to your rights under the Corning contract, you remember that Corning developed a machine known as "399"?

A. Oh, yes.

Q. What is that better known as in the industry?

A. Bulb machine.

Q. Or the ribbon machine?

A. Ribbon machine or bulb machine.

Q. Very well known as the ribbon machine. Now, under your '22 contract you were entitled to exclusive rights, were you not, under that machine, in respect of the container field?

[fol. 2374] A. That is correct.

Mr. Sayles: If Your Honor please, I will object to this line of testimony. The contract certainly is the best evidence, and the contract is already in evidence. Mr. Isseks is asking a layman as to the contract rights of a contract which is in evidence.

Mr. Isseks: All I want is his understanding, because it will become very material in this case. I want his understanding of what his rights were.

The Court: I will overrule the objection. He may answer, if he knows.

(Previous question and answer read.)

Q. You want to make an explanation?

A. The container, merely the container field as defined in the contract.

Q. Now, field "J", ware division, was the field under your contract with Corning which was generally referred to as the container field. Whatever that says, that is what your rights were?

A. Right.

Q. In respect of the ribbon field?

A. I think that is so, but I cannot carry it in my mind.

Q. I am trying to get your understanding, that is all. Do you know whether or not the "J" field included tumblers, the ordinary glass tumbler that is in front of you?

A. Well, it included a lime glass tumbler but it didn't include a paste-mold tumbler.

Q. Now, in the ware division "H", which is the paste-[fol. 2375] mold field, you had certain rights, did you not, only if Corning did not itself go into that particular field of ware?

A. Well, that I would have to check on.

Q. I will read it to you: "Machine rights apportioned to Hartford Company in Corning machine rights in ware division "H"—this is the paste-mold field, and would include a tumbler other than a lime glass tumbler, is that not right?

A. A tumbler made by the paste-mold process.

Q. "Exclusive"—that is to Hartford—"except for shop right reserved to Corning. Provided that no sub-license shall be granted by Hartford to others than its subsidiaries for the making of any given article which is at the time of making such grant being commercially supplied by Corning." So that your exclusive right in connection with paste-mold tumblers could not be exercised by you, insofar as you would give it to licensees, if Corning went into that field commercially?

A. That is as regards Corning's own developments.

Q. I am talking only about the 399. That is right, isn't it?

A. That is what it says.

Q. I want your understanding, because we are coming to a business problem in a few minutes, not a legal problem which Mr. Sayles referred to.

A. Well, Corning, if they developed machines of their own, which were their own property rights, did not come to us if they were using those machines in their own plant, and I think they had the right to sub-license or sell to one party.

[fol. 2376] Q. That is the paste-mold?

A. Yes.

Q. Not talking about field "J", which is the general container field?

A. No, just the paste mold.

Q. So if you could make a bottle under 399, or the ribbon machine, or anything else in the "J" field, that came to you?

A. That came to us.

Q. There was no restriction on your right to sub-license?

A. That is correct.

Q. But in the paste-mold tumbler field, if they developed their own machines for tumblers, then you could not sub-license it?

A. Not if they were using it themselves, or they had given rights to one other concern.

Q. I see. Now, of course, we have already had brought out that your company could not go into the business of manufacturing glassware commercially unless 65% of the stockholders or all the directors approved?

A. That is right.

[fol. 2377] Q. Empire Machine had between 40 and 45 per cent of your stock, did they not?

A. That is correct.

Q. Throughout this period up until the recent dissolution of Empire Machine?

A. That is correct.

Q. Do you know where that stock is now, after dissolution?

A. No, sir.

Q. It is in the Empire Machine stockholders?

A. I assume so.

Q. And the Empire Machine stockholders were a small group of Corning people?

A. I think there were some outsiders, too.

Q. There are?

A. I am not sure.

Q. Corning has always had, ever since 1922, four directors on your Board, have they not?

A. I think that is true.

Q. You have to get either 65 per cent of the stockholders, is that not right, to go into the glassware business?

A. No, 65 per cent of the stockholders or the unanimous vote of the Board.

Q. Throughout this period you had four Corning directors on your Board?

A. That is right.

Q. You have them today?

A. I don't know what you call Mr. Falck.

Q. Mr. Falck is on your Board?

[fol. 2378] A. Yes, but he was Empire.

Q. He is on the Corning board today, is he not, chairman of the Board of Directors?

A. That is right.

Q. And Mr. Day is on the Corning board, is he not?

A. Not that I know of.

Q. He is connected with Corning?

A. Not that I know of.

Q. Has he ever been connected with Corning?

A. He has been a consultant, as I understand it.

Q. Mr. Houghton is on your Board?

A. That is right.

Q. Who else that you call Corning men?

A. Amory Houghton, Arthur Houghton, A. B. Houghton.

Q. You have five Corning people?

Mr. Haight: Mr. Day is not on the Board.

Q. Amory Houghton is on the Board?

A. Yes, sir.

Q. A. B. Houghton?

A. Yes, sir.

Q. Arthur Houghton?

A. Yes, sir.

Q. And Mr. Falck?

A. Yes, sir.

Q. So that under No. 399, your company has rights in the general container field and would have rights in the paste mold field if Corning did not go into that field commer- [fol. 2379] cially, or, as stated, gave it to one company?

A. I think that is correct.

Q. No. 399, or the ribbon machine, was developed a number of years ago?

A. Yes, sir.

Q. A very fast machine?

A. Very.

Q. It makes bulbs primarily today?

A. That is correct.

Q. And since it was developed?

A. That is correct.

Q. By bulbs we are talking about the envelope of an incandescent lamp?

A. That is right.

Q. Did you ever license any of your licensees under the ribbon machine in respect of containers generally?

A. No. The ribbon machine has never been developed for containers. A great deal of money has been spent in trying to make it into container machinery, but we were never able to have success with it.

Q. But your two invention licensees, Hazel since 1932, and Owens since 1924, have invention rights in respect of that machine, do they not?

Mr. Sayles: If Your Honor please, objection to that, on the same ground. It is not the best evidence. That is a rather complicated situation.

(Question withdrawn.)

Q. What is your understanding, or was your understand- [fol. 2380] ing in 1939, as to the rights of your two invention licensees, Hazel and Owens, in respect of the ribbon machine, under which you have testified you had exclusive rights in the general container field, and certain limited rights in the paste mold field?

Mr. Sayles: The same objection.

The Court: Overruled. He may answer, if he knows.

A. If we had been able to develop that No. 399 machine, or the ribbon machine, so that it would make bottles economically, and was better than our own equipment, I would assume that our licensees would have wanted to use that equipment, take it and pay royalties.

Q. Your invention licensees—you only had two, did you not?

A. That is all.

Q. They were entitled to those rights if they could build them themselves, were they not?

A. Ask Coloniel Brown.

Q. I may have the opportunity some other time. I want your understanding.

A. That is a pretty technical question, Mr. Isseks. I might be right in saying yes, or might be wrong in saying yes.

Q. I will not press the matter. Your company developed the machine, did it not, or rather obtained a patent which related in some respects to the No. 399 ribbon machine developed by Corning?

A. Can you help me by giving me some specific instance?

[fol. 2381] Q. I am talking about the Howard Auto Blow?

A. There was a patent we acquired when we took over the Howard assets.

Q. I think Mr. Howard developed that after he came with you?

A. I don't know. He may have. I don't know.

Q. He either developed it before he came or after he came?

A. I could not tell you which.

Q. It is the same Howard who had the Howard Feeders, who was the inventor of the Howard Auto Blow?

A. That is correct.

Q. You had title to that patent?

A. Yes, sir.

Q. Did any trouble come up between your company and Corning in respect of the Howard Auto Blow insofar as it had any relation to the No. 399?

Mr. Haight: Fix the period.

Q. Between 1922 and 1939.

A. There was a question, Mr. Isseks, as to whether that Howard Auto Blow patent, some of the claims, read on the 399 machine.

Q. Did you have any conferences with the Corning people about it?

A. I think we did.

Q. What was the position that they took, and what was the position that you took—I now refer specifically to the period of time, 1928 and 1929?

A. They definitely took the position that the patent did [fol. 2382] not over-lie their machine.

Q. You did?

A. They did.

Q. What position did you take?

A. We took the position that there were claims there, at least, reading on the machine; but there was a sort of deadlock.

Q. Then what happened?

A. I have forgotten whether that question went to arbitration or not. It may have gone to arbitration.

Mr. Isseks: Your Honor, at this time I should like to have marked a memorandum furnished us yeterday. I don't know whether it is in Your Honor's book or not. It is stated: "Memorandum of Conference December 6th, 1929;" signed at the end, "Knox Smith". Does Your Honor have it there?

The Court: Yes.

Mr. Isseks: Thank you. It is three pages. The first two pages are the memorandum, and there is nothing attached to it.

The Clerk: Government's Exhibit No. 380.

Q. Mr. Smith, I ask you to look at the second page, and see if you can identify the signature of Mr. Knox Smith?

A. I do.

Q. Be kind enough to read it, and tell us if you remember the conference referred to therein.

(Witness reads document.)

Q. The question is whether you remember the conference [fol. 2383] referred to in the memorandum?

A. No, but I know we had meetings and discussed the situation.

Q. Does the memorandum set forth what generally took place at any conference you attended with the persons indicated thereon?

A. I could not tell you, Mr. Isseks.

Mr. Isseks: I offer it in evidence, Your Honor, for the limited purpose.

The Court: It may be admitted, over objection.

Mr. Sayles: Limited, if Your Honor please, to the ideas of Mr. Knox Smith?

The Court: That is right.

Thereupon, Government's Exhibit No. 380 was read to the Court by Mr. McCracken, of counsel for the government.

Mr. Isseks: I do not care to have read the last page. It is technical language.

At this time I should like to have marked a contract dated January 23, 1930. This is a photostat of the original. It is entitled: "Special Agreement Amending Glass Contract, Corning Glass Works and Hartford-Empire Company".

Q. I ask you, Mr. Smith, whether that is your signature on behalf of the Hartford-Empire Company?

A. It is.

Q. Do you identify the signature of Mr. Falck, on behalf of the Empire Machine Co.?

A. Yes, sir.

[fol. 2384] Q. Do you identify the signature of Mr. Sullivan, on behalf of the Corning Glass Works?

A. I think so.

The Clerk: Government's Exhibit No. 381.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, over objection.

Mr. Isseks: Your Honor, as I understand this document, Corning is given an exclusive license, royalty-free, in its fields under certain patents, including part of the Howard Auto Blow; and Hartford is similarly given exclusive rights in its fields in respect to certain inventions of Corning within a period of time. There is an exclusion from the grant, going from Hartford to Corning, of certain claims specifically numbered under the Howard Auto Blow.

Q. Now, Mr. Smith, even after this supplemental agreement was signed, you still had some problems, did you not, with Corning with respect to your rights under 399, and your rights also under the Howard Auto Blow?

A. I cannot remember the dates. I thought that agreement settled all of the questions.

Mr. Isseks: I ask counsel to produce, if they can, the memorandum by Mr. Safford, written February 26th, 1930; File C-22, referred to in the February 26th, 1930, diary entry of Herbert Knox Smith.

The Court: They may make a search, and produce it if they find it.

Q. Mr. Smith, do you not remember that your company [fol. 2385] was considering the possibility of using the Howard Auto Blow patent, which you owned, for making bulbs?

A. No. We experimented with that patent, that process, to see whether we could make bottles by that process. We spent a lot of time on it. The experiment was a failure.

Q. Do you not remember that you were discussing the possibilities of using it for bulbs, too? I direct your attention to the March 6th, 1930, diary entry—I have only one copy here—of Herbert Knox Smith—the last line, and see if that refreshes your recollection?

A. No, Mr. Isseks, I could not tell you why that question would even come up at that time.

Mr. Isseks: I should like to have counsel see if they can produce for us the memorandum written by Mr. Parham, February 28th, 1930, relating to the 399 situation.

Q. Now, Mr. Smith, do you remember a time came when Owens-Illinois was interested in using the ribbon machine for tumblers?

A. No. I remember that—well—I think recently, probably, the matter may have been taken up between Owens and Corning. But I don't remember. I was not present at any of those meetings.

Q. Did Corning ever give Owens the right to use the ribbon machine for tumblers, so far as you know?

A. So far as I know they never did; but I was not consulted in those matters. I think Owens asked us whether [fol. 2386] we had any rights in that machine for tumblers, and we told them no, and referred them to Corning. Now, what took place between Corning and Owens, I would not know.

Mr. Isseks: Your Honor, at this time I should like to have marked the letter dated September 14, 1931, addressed to Mr. Curtiss, signed by Mr. Dorsey; copies to Mr. Houghton and W. R. Green; stipulated as a genuine document by Corning.

* * * * * * *

[fol. 2387] Mr. Isseks: Your Honor, when it is offered, it is offered for the limited statement made by Mr. Dorsey, who is alleged to be a co-conspirator since long prior to 1922, in a bill of particulars furnished to the defendant Corning.

The Court: I think I will overrule the objection and permit it to be read. I do not see that it pertains to any matter involving a legal opinion or legal advice. It may be admitted for the limited purpose only; and not for the purpose, of course, of considering the truth of anything that Mr. Henry Carter may have said.

The Clerk: Government's Exhibit No. 382.

Mr. Isseks: Thank you, Your Honor. I should like to have it read.

Thereupon, Government's Exhibit No. 382 was read to the Court by Mr. McCracken, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked a letter which Your Honor does not have there. It is a letter dated June 16, 1937, from Mr. Curtiss to Mr. C. B. Belknap, Owens-Illinois Glass Company. It has been stipulated as a copy of a genuine document by the defendant Corning Glass Works. Here is a copy for Your Honor. I offer it in evidence.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 383 was read to the Court by Mr. Kramer, of counsel for the government.

(Morning recess.)

[fol. 2388] Mr. Isseks: Your Honor, at this time I should like to have marked a memorandum, inter-office, dated February 27, 1932, addressed to Mr. Amory Houghton; copy to Judge Green; from W. H. Curtiss; stipulated as a copy of a genuine document by Corning. Mr. Curtiss is a defendant, Your Honor, as is Mr. Amory Houghton. I offer it in evidence.

The Court: It may be admitted, over objection.

The Clerk: Government's Exhibit No. 384.

Thereupon, Government's Exhibit No. 384 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, you heard that read, did you not?

A. I did.

Q. Does it refresh your recollection that in 1932 Hartford was having conferences with Corning in respect of the exploitation of the ribbon machines for tumblers?

A. I think that is true.

Q. Did Corning ever use the ribbon machine for tumblers?

A. I think they are using it now.

Q. When did they start using it?

A. I cannot tell you.

Q. Paste mold tumblers?

A. Yes, sir.

Q. Not tumblers made in any other way?

A. No. I cannot tell you whether it is the original bulb machine, or whether it is some variation of that.

Q. By bulb machine, you mean the ribbon machine?

A. Yes. It may be a variation of that.

[fol. 2389] Q. Do you remember later on, some time in 1933, there were further conferences between you on behalf of Hartford, and representatives of Corning, and particularly Mr. Amory Houghton, with regard to your right to use the Howard Auto Blow in connection with your fields?

A. I do not happen to remember those conferences.

Mr. Isseks: At this time, Your Honor, I should like to have marked an inter-office memoranda to Mr. Amory Houghton, from Mr. Curtiss; re Howard Auto Blow patent; dated April 4, 1933.

The Clerk: Government's Exhibit No. 385.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 385 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, you testified yesterday that Mr. Parham was a patent solicitor?

A. An attorney.

Q. A patent attorney: he is employed by your company, is he not?

A. That is correct.

Q. Inside?

A. That is correct.

Q. He is on an annual payroll basis?

A. That is correct.

Q. And has been for a number of years?

[fols. 2390-2392] A. That is correct.

Q. He does not have an outside office?

A. No, sir.

Mr. Isseks: Your Honor, at this time I should like to have marked a photostat of a memorandum dated February 28th, 1930, furnished to us shortly before recess, from Mr. Parham to Mr. F. G. Smith; "Copies to Messrs. H. K. Smith, R. D. Brown, K. E. Peiler,—Subject: 399 Auto Blow Contract". I have a copy here which we made as soon as we could, for Your Honor.

Mr. Haight: If Your Honor please, I object to it as a privileged communication from a patent attorney to executive officers of the company.

* * * * * * *

[fol. 2393] Mr. Isseks: Government's Exhibit No. 386 is deferred.

Q. Now, Mr. Smith, you remember that in 1922 you had this contract with Corning, and Corning had these directors on your Board, and had certain stock interest in your company?

A. That is right.

Mr. Sayles: Objection.

(Question withdrawn.)

Q. After your 1922 contract with Corning, your relationships with Corning were close, were they not?

A. Yes, sir.

Q. Do you not remember that a time came when it was suggested that perhaps the relationship ought to become a little closer?

A. There was a time when we thought of re-vamping the 1922 contract.

Q. Do you not remember that there was a suggestion made by both of your companies that something be worked out where there would be an entirely free, non-royalty exchange of inventions between the two companies?

A. I think that is true.

Q. Can I fix the date as some time in 1929?

A. If your record shows it was around 1929 or 1930—I would have said 1930, as a guess.

Q. See if I can fix the date as of October, 1929. I show you a diary entry. Look at the diary entry of October 7, 1929. I direct your attention to Item E in that diary entry, [fol. 2394] and ask you whether you recall the conversation with the Corning people, more particularly Mr. Amory Houghton and Mr. Curtiss, with regard to the subject matter you testified to?

A. I think we had a number of conferences in regard to it.

Q. Does the diary entry refresh your recollection that they started as early as October, 1929?

A. No, sir.

Q. It does not?

A. No, sir.

Q. You do not dispute it?

A. No; I would have said it was later, in the 30's.

Q. But you do not dispute the diary entry?

A. No, sir.

Q. Do you remember after your first conversations, the first conversations you had about this subject matter, you delegated your secretary and general counsel to prepare something which could be used as a basis for a proposed new arrangement between your company and Corning?

Mr. Haight: May I ask the witness one question to lay the foundation for an objection?

Mr. Isseks: Certainly.

Mr. Haight: Was any change such as Mr. Isseks has talked about, and such as the question implies, in the 1922 contract ever made until the same was cancelled in September of 1940?

Mr. Isseks: Objection to that question. It pre-supposes a state of facts not before Your Honor, namely, that there [fol. 2395] had been a contract cancelled.

Mr. Haight: I will ask him that, if you want me to.

Mr. Isseks: I will object to that question as an improper question at this time.

Mr. Haight: I want to lay the foundation, if Your Honor please, for showing that the discussion——

Mr. Isseks: I will stipulate.

Mr. Haight: Stipulate what?

Mr. Isseks: Stipulate that before December, 1939, there was no amendment, as far as I know, of the Corning, Empire Machine, and Hartford-Empire contracts of October, 1922, other than has now been offered this morning. I am talking about December, 1939, when we filed the complaint.

Mr. Haight: All right. I object to the question as irrelevant and immaterial. What these parties may have thought, what negotiations they may have had for a change of the contract, is of no moment if the contract was never changed.

Mr. Isseks: The documents are being offered, and the questions are being asked, for the purpose of showing the relationship that continued under the existing contracts; the fact that there was a division of fields, with the full realization that it was monopolistic; and with the full realization that it was in some respects antagonistic to the Federal laws.

[fol. 2396] The Court: What is the question now? Read the question.

(Question read.)

The Court: I think I will overrule the objection. He may answer that question, if he knows.

The Witness: Yes.

Mr. Haight: May my objection go to all of the questions that are directed to this particular subject?

The Court: It may.

Q. Do you remember that Mr. Knox Smith prepared a memorandum of policy of the Hartford-Empire Company?

A. Yes, sir.

Q. You remember that you went over that memorandum with him, do you not?

A. I don't remember whether I did or did not.

Q. I am going to refresh your recollection. I ask you to look at the diary entries for January 21, 1930; January 28, 1930; and January 29, 1930; and see if it does not refresh your recollection that you went over the memorandum of policy with Herbert K. Smith?

A. I don't remember it, but I probably did.

Q. I want to get a little better recollection. Look at the diary entries for February 2, 1930, February 8, 1930, February 10, 1930, February 11, 1930, February 14, 1930, and February 18, 1930, and see if that does not refresh your recollection that you did?

A. No; but I think there were probably certain matters in that memorandum that Mr. Herbert Smith did take up with me.

[fol. 2397] Q. Do you not remember that you went over the memorandum of policy with Mr. Smith?

A. I do not happen to remember it, Mr. Isseks. I think probably Mr. Knox Smith did confer with me on that matter, but I have no particular recollection of it.

Q. You would not say you did not go over it with him?

A. No, sir.

Q. Do you not remember seeing the memorandum of policy?

A. No—you mean have I seen it since?

Q. No, at the time it was prepared?

A. I think there were probably certain phases of that that he probably took up with me, but I just have no detailed memory of it.

Q. Do you not remember you saw it at the time it was prepared, the memorandum of policy?

A. No, but I think I probably did.

Q. See if I cannot refresh your recollection. At page 391 of the TNEC record—I certainly can refresh his recollection——

Mr. Haight: Show it to him.

Q. At the bottom of page 391. (Document shown witness.) Do you not remember that you testified at that time that you saw a copy of it at the time it was written?

A. If I did, I did.

Q. What is your present recollection?

A. I just told you before that, I think I probably did go over it.

Mr. Isseks: I am sorry. I misunderstood you.

[fol. 2398] At this time, Your Honor, I should like to have marked two documents: the first, a May 19, 1930, letter from Mr. Knox Smith to Mr. William E. Green, Jr.——

Q. Mr. Green did not represent your company, did he?

A. No, sir.

Q. He represented Corning?

A. Corning.

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[fol. 2399] The Court: I think if it is admissible, it is admissible only as indicating a state of mind at that time of Mr. Knox Smith.

Mr. Isseks: And insofar as it relates to Hartford-Empire.

[fol. 2400] The Court: Hartford-Empire, and not to Corning. If a statement was made here as to what was in the minds of Mr. Knox Smith, and Mr. William R. Green, to whom the letter is addressed, it would have no binding effect upon Mr. William R. Green, or the company he represents.

I will admit it for that limited purpose, and overrule the objection.

Mr. Sayles: Note an exception.

The Clerk: Government's Exhibit No. 387.

Mr. Isseks: At this time I should like also to have marked a memorandum of policy by Hartford-Empire, February 18, 1930, to which the witness has made reference, and to which specific reference is made in paragraph 4 of this letter, Government's Exhibit No. 387, as having been prepared by—he says—"we"—meaning, I assume, the Hartford-Empire, and of which Mr. Knox Smith says in the letter: "I have lent you a copy, and which states our view of the proper permanent policy of the Hartford-Empire Company." The document has been stipulated as coming from the files of the Hartford-Empire Company.

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[fol. 2401] Q. Did you go over the memoranda of policy with Mr. Knox Smith?

A. Mr. Smith wrote that memoranda of policy and I probably read it at the time it was written, and there may have been some parts of it he may have conferred with me on, but it is his memoranda.

Mr. Isseks: Fine. That is all I wanted to know about it. I think that was in the record already.

Mr. Wall: It was just in these words and not as you stated.

Mr. Isseks: All right. I offer Exhibit 388 in evidence.

Mr. Haight: It may be limited in its purpose?

Mr. Isseks: That is right.

Mr. Haight: The same way we have limited all of them?

[fols. 2402-2407] The Court: Yes. It may be admitted for the limited purpose, showing state of mind of Knox Smith and the company he represented at that time.

Q. Of course, Mr. Smith, when Mr. Knox Smith wrote this and when he went over it with you he was acting on behalf of Hartford, wasn't he?

A. I can't tell you why he wrote it. I know he did write it. I can't tell you what he wrote it for, but he did write that memoranda and I think I read it and it was written, but that is about all I can tell you about it.

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[fol. 2408] At this time I would like to have marked as a Government's Exhibit, memorandum which has in the upper left-hand corner in pencil "6-4-30" and in the center, "Memorandum in regard to revision of glass contract", signed at the end "H. K. S." in ink.

(Said document marked Government's Exhibit 389.)

Q. Now, Mr. Smith, will you look at the photostat and see if you can identify the initials at the end, in ink?
A. Yes; Herbert Knox Smith's.
Q. And Mr. Smith's handwriting, too?
A. Yes.
Q. Now, on the front are the letters, "F. G. S." and the word "Disc." on the top. Do you recognize that word?
A. Yes, that is Herbert Knox Smith.
Q. And the "F. G. S." and the word "(doubtful)" is in Herbert Knox Smith's handwriting?
A. Yes.
Q. And the words, "How about flat glass?"?
A. That is Herbert Knox Smith's.

[fol. 2409] Mr. Isseks: I offer the exhibit in evidence.
The Court: These are in the files of Hartford?
Mr. Isseks: Stipulated by Hartford as a genuine document. The copy I have is in Mr. Knox Smith's handwriting, identified by the witness. I would like to have it read.

(Government's Exhibit 389 read by Mr. Lewis.)

Mr. Sayles: May it please the Court, may that be limited in its application to the opinions or ideas of Mr. Herbert Knox Smith and not Corning?
The Court: I think it should be so limited.

Q. Mr. Smith, do you remember having conversations with Mr. Amory Houghton, A. B. Houghton, and Curtiss, with regard to the proposed new agreement between your two companies, such conversations taking place in the spring of 1930?
A. Well, I unquestionably had conversations with them about it. I don't place them at any particular time.
Q. You remember the conversations?
A. I did have conversations.
Q. What were the conversations about?
A. I cannot tell you. It was just a general discussion, I think, of this proposed new contract.

Q. What was your position and what was their position?

A. I haven't any idea.

Q. No recollection at all?

A. No; there were a number of things. It was very involved. The whole question of revamping, extending, modifying the '22 contract; unquestionably I talked to them about it.

[fol. 2410] Q. But you don't remember the substance of the conversations?

A. No.

* * * * * * *

Mr. Isseks: Your Honor, at this time I would like to have marked, memorandum which is dated June 26, 1930. It has on the top, "Rough draft of memorandum on new glass contract", and is stipulated as to genuineness by Corning, and the stipulation states the author of the memorandum is "H. K. S." The copy we have does not so indicate, other than you can get that understanding from reading the contents of the document.

* * * * * * *

[fol. 2411] Q. Now, Mr. Smith, do you remember that these conferences continued over quite a period of time between you and the Corning people?

A. Well, I didn't have many conferences personally. Most of that whole preparation of revision, which never took place, was handled by Judge Green, and Herbert Knox Smith.

Q. You said before you did talk to Mr. Curtiss and Mr. Amory Houghton?

A. I don't think there is any question about that.

Q. Do you remember it got to a stage where Mr. Knox Smith prepared a summary of the status of the proposed glass revision contract?

A. No, but I think that might well have taken place.

Q. Do you remember his going over that summary with you?

A. I don't happen to; probably did.

Q. See if this diary entry for January 13, 1931, refreshes your recollection that he did go over such a summary with you?

A. (After examining same.) No, but I have no reason to doubt, Mr. Isseks, that he did.

[fol. 2412] Mr. Isseks: At this time I would like to have marked as the next Government's Exhibit, a letter dated January 14, 1931, from Knox Smith to Mr. William R. Green, Jr., stipulated as to genuineness by Corning, item 646 of the stipulation.

(Marked Government's Exhibit 391.)

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted over objection.

(Government's Exhibit 391 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to have marked, the enclosure referred to in that letter. The copy we have here is a photostat furnished us by counsel this morning, or yesterday. It states on the top, "Summary of Status of Discussions on Revision of Glass Contract to December 29, 1930". Up in the upper right-hand corner it has, "1-14-31". "One copy sent to WRG. Read by F.G.S." It has 19 pages. I would like to have it marked as the next Government's Exhibit.

(Marked Government's Exhibit 392.)

The Court: Who is the author?
Mr. Isseks: Your Honor, you will recall in the previous exhibit, Herbert Knox Smith to Mr. Green, he refers to a memorandum, "Summary of Status of Discussions on Revision of Glass Contract" which the writer said he wrote, and I understand from that document it is written by Mr. Herbert Knox Smith, it appears, at least. I am going to ask the witness about the handwriting.

Q. Looking at the photostatic copy of the first page, can [fol. 2413] you recognize any of the handwriting thereon? I direct your attention to the handwriting in the upper righthand corner.
A. That is Herbert Knox Smith's handwriting.
Q. And on the front, to the words "To Dec. 29, 1930"?
A. That is his.

Mr. Isseks: He says that is Herbert Knox Smith's. And he points to the words in the middle of the first page, "Should be included", and so forth. In the upper right-hand corner the words "H.K.S."
The Witness: Yes, I think that is his handwriting.

Q. His handwriting up in the upper right-hand corner?

A. Yes.

Q. And there is some handwriting on the second page which says "Yes. E.G.S." Do you recognize that handwriting?

A. That is Herbert Knox Smith's.

Q. There is one correction at page 4, on the top of the page; instead of the word "corrections" there is the word "complications". Do you recognize that?

A. Yes.

Q. The same gentleman?

A. Yes.

Q. On page 6 there is some handwriting.

A. That is all Mr. Knox Smith's handwriting.

Q. Page 8 there is some handwriting?

A. Yes, I think that is his handwriting.

Q. The same on page 9?

A. That don't look like it, but that does.

[fol. 2414] Q. The word "omit" on page 9, the witness says is not in the handwriting of Herbert Knox Smith, but the word "disturbing" he says is. On page 11 there is some handwriting. Can you recognize that?

A. That is, but that does not look like it.

Q. The words "omit" covered by "W.B.A" the witness says is in the handwriting of Knox Smith, but the words "This does not take in tableware or pressed-ware articles" the witness says is not.

At page 12 there is some handwriting?

A. I think that is Mr. Knox Smith's handwriting.

Q. At page 13 there is some handwriting?

A. Yes, that is Mr. Smith's handwriting.

Q. Two words at page 16, the words "in part"?

A. I think that is also his handwriting.

Q. Some handwriting on page 17?

A. I think that is Mr. Knox Smith's handwriting.

Q. The handwriting on page 18 and then stricken out, on the bottom of the page?

A. Yes, that is Mr. Knox Smith's.

Q. And the handwriting on the right-hand side?

A. I am not sure.

Mr. Isseks: I offer that in evidence.

The Court: It may be admitted, over objection.

Mr. Sayles: We note the same objection.

Mr. Wall: May we note, merely for convenience, it is admittedly a draft, whether sent or not we don't know, but it came from our files.

[fol. 2415] Mr. Isseks: We agree with Mr. Wall. We don't know whether that is the same thing that went to Mr. Green, but this is the one that came from the files of Hartford.

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[fol. 2416] Mr. Smith, do you recall that in connection with these various discussions with the Corning people, you and Mr. Safford went over a memorandum which Mr. Knox Smith prepared, and which he designated "Protection of Monopolies"?

A. No, I do not.

Q. I show you a diary entry of March 5, 1931—there are other diary entries on that piece of paper—and see if that refreshes your recollection.

A. No, I do not happen to remember it, Mr. Isseks.

Mr. Isseks: Your Honor, at this time I should like to have marked a number of pieces of paper. There is a pencilled date on the right hand corner: March 3, 1931. It is entitled: "Revision of glass contracts protecting monopolies". It is divided into two parts. The first portion has numbers in the lower righ hand corner: 3534 to 3539, inclusive; and has paragraphs numbers 1 to 11, inclusive; and pages 1 to 6.

The second portion begins with paragraph No. 32, and has in the lower right hand corner 3529, and runs over to 3533, inclusive.

I should like to have them marked; and then ask the witness some questions. It is stipulated by Hartford-Empire Company as having come from its files.

The Court: How many pages?

Mr. Isseks: It has eleven pages in toto, Your Honor.

Mr. Middleton: Would you mind giving those lower pages?

[fol. 2417] Mr. Isseks: The first portion is 3534 to 3539, inclusive; the second portion, 3529 to 3533, inclusive. We obtained this from Hartford. It is stipulated by them as coming from their files.

Q. There is handwriting on the first page. Do you recognize the handwriting?

A. That is Mr. Herbert Knox Smith's handwriting.

Q. There is some on the third page.

A. Yes. I think that is his handwriting.

* * * * * * *

Q. I think I was at the third page with the witness. I ask the witness whether the handwriting on the third page as that of Mr. Knox Smith?

A. It is.

Q. The handwriting on the fifth page?

A. Yes, sir.

Q. And on the sixth page?

[fol. 2418] A. Yes, sir.

Q. And on the page numbered 17?

A. I think so.

Mr. Isseks: I offer the eleven pages as one exhibit in evidence.

The Court: It may be admitted, over objection.

Mr. Sayles: Limited, if your Honor please?

The Court: Yes.

The Clerk: Government's Exhibit No. 393.

* * * * * * *

[fol. 2419] Q. Now, Mr. Smith, you heard that read, did you not?

A. I did.

Q. Do you remember going over that memorandum or the completed memorandum? Apparently there are certain portions that have been deleted or omitted—and making certain comment yourself?

A. No. I might have done it.

Q. I will show you a document which may help you refresh your recollection.

Mr. Isseks: I should like now to have marked a memorandum of three pages which has on the top: "Comments on Memorandum of March 3, 1931, 'Protecting Monopolies' ". In somebody's handwriting there is a date,—March 9, 1931; unsigned. It is stipulated by Hartford, I believe.

The Clerk: Government's Exhibit 394.

Mr. Isseks: Stipulated by Hartford as coming from its files.

[fol. 2420] Q. Please look at the memorandum, Mr. Smith, and see if you can identify the handwriting on the first page?

A. That is Mr. Knox Smith's handwriting.

Q. Pointing to the date of March 9, 1931?

A. That is not his handwriting down below.

Q. Will you please look at it and see if that refreshes your recollection that you made comment on the memorandum which has been marked here as Government's Exhibit No. 393?

A. Mr. Isseks——

Q. Yes.

A. It merely reminds me, as I already told you, unquestionably I discussed these matters with Herbert Knox Smith off and on. There is nothing here that would tie this particular memorandum of Knox Smith's to the memorandum just read, that I can see.

Q. You will note that the memorandum you have in front of you, which is Government's Exhibit No. 394, states that it comments on memorandum of March 3, 1931, protecting monopolies, Government Exhibit No. 393,—I show you a photostat—it is a memorandum which has on it: "Revision of glass contracts protecting monopolies", and see if that refreshes your recollection? And I show you a diary entry for the same date, March 5.

A. I think these things were discussed; there is no question in my mind about that.

Q. You have no reason to question, when Mr. Knox Smith says that you made certain comments, that his statements [fol. 2421] set forth your comment?

A. Well, yes, there were lots of times that Mr. Knox Smith and I did not agree on things. There were a great many times that I would express something differently from what he expressed. But there is not much question in my mind that these particular matters here referred to in this memorandum were discussed with me.

Q. And the statements that he says you made, as set forth by him in that memorandum, were made by you?

A. Not——

Q. Not in those very words?

A. And I don't remember all of the subjects. I remember some of them.

Q. Which ones do you remember?

A. Well, I don't think I had any objections to Corning making vault lights, if they could. There were certain things I thought Corning ought to give us, in a general way, as listed here.

Q. Anything else, sir?

A. There were certain other rights we wanted. I don't know whether this is what I said at the time or not; but it might have been. I do remember that I said that they could help us with furnace problems.

Mr. Isseks: I offer it, sir.

The Court: It may be admitted, limited as heretofore.

Mr. Isseks: Not as against Hartford?

[fol. 2422] The Court: Not as against Hartford.

Thereupon, Government Exhibit No. 394 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, counsel have told us that they will try to locate—and I think Mr. Wall said they have located—the memorandum of March 13, 1931, referred to in Mr. Knox Smith's diary entry for March 12, 1931.

Mr. Wall: That is correct.

Mr. Isseks: Your Honor, at this time I should like to have marked a memorandum consisting of six pages, dated March 26th, 1928, which has on the top: "Memorandum as to Hartford-Fairmont and Hartford-Empire History and Policy". It has been stipulated as a copy of a genuine document by Hartford-Empire Company at page 15 of the stipulation. It purports to be signed by "H.K.S." at the end. I offer it in evidence, Your Honor.

Mr. Haight: Objection to it, Your Honor, on the same grounds that we have objected to some of the other Knox Smith memoranda. It is merely a recitation of past events, consequently cannot be evidential as against the Hartford-Empire Company in any respect. It does not appear to have been made in the course of its business or for the purposes of the business, and as such of course it cannot be considered as an admission against Hartford. What it may be as to Mr. Smith is quite another subject. But I submit that Mr. Smith cannot be subject to any injunction. In [fol. 2423] any proceedings in this case, it should not be admitted to show what he may have said which, if he were alive and subject to some remedy in this suit, might be considered as an admission against interest so far as he were concerned.

Mr. Isseks: Your Honor has in mind that Mr. Smith was secretary and general counsel of this corporation at the time he wrote it,—Herbert Knox Smith.

Mr. Haight: That does not make any difference in past transactions.

The Court: The heading, "General Contract Policy": does that refer to past transactions?

Mr. Isseks: Your Honor, the contents show that this is a memorandum relating to the policy of the company, past as well as continuing, and it is offered for that purpose, of showing a state of mind.

The Court: You mean of the Hartford-Empire Company?

Mr. Isseks: Yes.

Mr. Haight: If Your Honor will look at the first part: it says history.

Mr. Isseks: A man cannot tell what the policy is without telling what the history is, ordinarily. I submit, Your Honor, the document is admissible, just like all the other Knox Smith memoranda have been admitted, for the purpose of showing a state of mind.

The Court: I am going to admit it for the same limited purpose for which I have admitted the other documents [fol. 2424] of this kind. You may have your exception.

Thereupon, Government's Exhibit No. 395 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, prior to July 1, 1932, which of your licensees had a "most favored nation" clause?

A. The Owens Company did.

Q. Anybody else?

A. I don't know.

Q. You would not say that nobody else did?

A. No, I just cannot tell you, Mr. Isseks.

Q. The record will show?

A. The records will show, yes.

Mr. Isseks: Now, Your Honor, I am going to read from the minutes of an executive committee meeting, September 18, 1929. It says that the meeting was held at the office of the Corning Glass Works—this is a meeting of Hartford-Empire—in New York City, eleven a. m., September 18, 1929. There were present Messrs. Goodwin Smith, Houghton, Arkell, Falck, and Knox Smith; also Mr. Eldred by invitation. It is two pages——

The Court: It is the minutes of Hartford?

Mr. Isseks: A meeting of Hartford. They met at the office of the Corning Glass Works, New York City, September 18, 1929. Present were the persons I mentioned,—one, two, three, four directors; and Mr. Eldred by invita- [fol. 2425] tation. The minutes are attested to by the secretary, Herbert Knox Smith. I am going to read just one paragraph: "Memorandum on General Policy".

[fol. 2426] (Reading:) "Memorandum on general policy. Mr. Goodwin Smith also submitted a memorandum on the general policy of the company, which was considered without substantial criticism."

Q. Do you remember that instance?

A. No, I don't.

Q. Do you remember writing a memorandum of general policy?

A. I probably did, because it refers to it there.

Mr. Isseks: I have asked Hartford to produce such a memorandum if they can locate it.

Mr. Wall: We will if we can. I merely point out this meeting was September 18, 1929, and the previous exhibit was March 26, 1928. Whether there is any connection, we do not know.

Mr. Isseks: That is correct. I haven't indicated that the memorandum referred to in the minutes of the meeting, which is a memorandum of Mr. Goodwin Smith, is the same one written by Mr. Knox Smith.

Mr. Wall: I suggest it only from my own ignorance.

Mr. Isseks: I suggest that if there is such a memorandum we would like to have it.

The Court: Counsel will make search, and see if they can produce it.

Mr. Haight: Have you offered all those minutes?

Mr. Isseks: I just read that section, is all.

Your Honor, at this time I would like to have marked, a letter dated May 19, 1924, on the stationery of Hartford- [fol. 2427] Empire Company, which purports to be signed by the witness, as vice-president of Hartford-Empire Company, to H. H. Baker, Treasurer, Owens Bottle Company. Stipulated as to genuineness by Corning Glass Works. I don't know how a copy got there, but that is the way we got it.

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[fol. 2428] Q. I show you Government's Exhibit 396 for identification, and ask you whether you wrote that letter to Mr. Baker, Treasurer of the Owens Bottle Company?

Mr. Isseks: While the witness is reading it, Your Honor, I would like to have marked, if I may, the reply from Mr. Baker to Mr. Smith, dated May 23, 1924. It has a notation, "Copy to Mr. Falck", and that, too, has been stipulated by Corning Glass Works, item 260 of the stipulation.

(Said last reply marked Government's Exhibit 397.)

Q. I will ask the witness also whether he received 397 in reply to 396?
A. Well, I don't doubt it.

Mr. Isseks: I offer Exhibit 396.
The Court: It may be admitted over objection.

Q. I will show you 397 and ask you whether you identify the signature of Mr. Baker on the photostat of the original letter?
A. I could.

Mr. Isseks: I offer 397.
The Court: It will be admitted over objection.
Mr. Isseks: I would like to have them both read.

(Government's Exhibits 396 and 397 read by Mr. McCracken.)

Mr. Haight: I think it would help Your Honor at this time if it were stated that under the Owens-Hartford contract of 1924 there was a provision that Hartford had to get permission from Owens to license others under things that came within the Owens patent, as to which Hartford was given a license. [fols. 2429-2430]

Mr. Isseks: Next, Your Honor, I have had marked as Government's Exhibit 398, a photostatic copy of a letter from H. H. Baker, Treasurer of Owens, to the witness.

Q. I ask you, Mr. Smith, whether you can identify that signature.

A. I do.

Q. As that of Mr. Baker?

A. Correct.

Mr. Isseks: I offer Government's Exhibit 398, letter of February 16, 1925, in evidence.

The Court: It may be admitted over objection.

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[fol. 2431] Q. Now, Mr. Smith, you testified, I believe, since you have been on the stand, as to the nature of your business. I would like to explore that just a little bit. Take machinery that you have built for your licensees. Who builds that?

A. Well, most of it is built in a shop adjoining our plant, by the Hartford Special Machinery Company. Parts and part of feeders are made in our own shop, and we assemble lehrs in our own shop; but the feeders and forming machines, most of them, are built in the Hartford Special Machinery Plant under our direction.

Q. Let's take a simple explanation: Fairmont, out here in Indiana, wants a feeder and a former from your company?

A. Yes.

Q. And he has to license them, does he not?

A. That is correct.

Q. How does he go about getting it, if he wants it in Indiana, and you are in Hartford, Connecticut?

A. Well, he asks us for a feeder or forming machine. We send on the license and lease agreement for him to sign. He signs it, and the regular order is placed through our organization.

Q. To Hartford?

A. Yes.

Q. Then what happens?

[fol. 2432] A. The order is placed and shipment is made of the machine and the feeder.

Q. By whom?

A. We ship the machines.

Q. Hartford ships the machines from Hartford, Connecticut, to Indiana?

A. That is right.

Q. Now, the same thing applies to parts?

A. Yes.

Q. Now, how do you bill that?

A. Bill it as a license fee of so much money.

Q. Initial fee?

A. Initial fee.

Q. Then, of course, you bill that through the mail?

A. Yes.

Q. And then you ship it by railroad and truck or airplane—how do you do it?

A. By railroad.

Q. Pretty heavy, aren't they?

A. Very.

Q. What about servicing? Suppose the gentleman in Indiana wants some service, how does he get service?

A. When the machine goes out we send our service men,—mechanics,—out to install the machine in the plant of the glass manufacturer.

Q. Your servicemen are in Hartford?

A. That type of installation men remain in Hartford.

Q. He has to go to Indiana by railroad?

[fol. 2433] A. Yes.

Q. He works for you and you pay him?

A. Yes.

Q. When I gave Fairmount as an example, of course that applies to every other licensee all over the United States?

A. Yes.

Q. One other question. You have agents at different parts of the country?

A. We have what we call five district representatives.

Q. Who are they?—I don't mean the names.

A. They are practical operating men with engineering experience, and they live around in different districts so as to visit the plants of our licensees and take up anything the licensees would like to consult with us about—the tank operation, or feeder operation, or forming-machine operation, lehr operation.

Q. Where are they located?

A. I think there is one in Indianapolis, one on the Coast, and one in the Pennsylvania district. I am not sure about the southern district.

Q. Are they employees of yours, on a salary?

A. Yes.

Q. You pay them by check, I assume?

A. I think so.

Q. Send the check through the mail?

A. Yes.

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[fol. 2434] Q. Where is your corporation incorporated?

A. Delaware.

Q. Are you qualified in any other state besides Delaware,—if you know?

A. Oh, yes, I think a great many.

Q. In how many of the 48 states in the United States?

A. That I cannot tell you.

Q. You said a great many?

A. I mean in most places where we do business or where our machinery is used.

Q. Wherever your machinery is located you have qualified?

A. I would say in most cases, but I cannot tell you, Mr. Isseks.

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[fol. 2435] Now, at this time I would like to have marked a longhand memorandum dated 12-23-26, all in handwriting, and at the top it says, "Memo in re Lamb Suit and Owens H. E. Gen. Agreement."

Q. Mr. Smith, I show you Government's Exhibit 399, and ask you whether you recognize the handwriting thereon?

A. Herbert Knox Smith's.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

(Said Government's Exhibit 399 read by Mr. Lewis.)

Q. You heard that read, did you not?

[fol. 2436] A. I did.

Q. Do you remember telling Mr. Knox Smith any time that you had vetoed a license in connection with your 1924 contract with Owens?

Mr. Haight: That Owens had, you said?

Mr. Isseks: That Owens had vetoed a license.

A. I remember at first we didn't license Three Rivers, and probably that was a veto, but I am not sure. Eventually we did license Three Rivers.

Q. Now, Mr. Smith, this problem of Section 22 was something that was on your mind, was it not, after 1924, and before the amendment to the contract relating to Section 22 which took place in 1931?

A. Oh, yes, it came up.

Q. Now, do you remember that there were various conferences between your representatives and the Owens representatives with regard to amending the contract, and particularly Section 22, which gave them—Owens—a veto power under certain circumstances?

A. I think that is quite true, Mr. Isseks.

Q. Do you remember there was considerable discussion as to the possible action to be taken by the United States Government in respect of that provision in the contract?

A. No, I don't remember that.

Q. See if I can refresh your recollection. I show you two diary entries dated January 4, 1927, and January 5, 1927, and ask you whether you can remember the confer- [fol. 2437] ences referred to in those diary entries?

A. (After witness refers to same.) What is the question, Mr. Isseks, now?

Q. My question is whether you remember that there were conferences with the Owens and Hartford people at which discussion was had that the United States Government might take action because of the provisions in your 1924 contract, and particularly Section 22?

A. No, I think that the—of course, we didn't like Section 22, because it restricted us from granting certain rights. I think that there was a time when Mr. Knox Smith brought up the question of legality, or law, or something of that sort; but that he would not discuss with me in detail. But I think there was a time during—well, I can't tell you the years—'28 or '29, when perhaps some decision, new decision, had been handed down.

Q. I am going to go to this, Mr. Smith,—I am going to show you pieces of paper of '29 and '30 where there was correspondence showing that the question of the legality was raised by Mr. Knox Smith. I am directing your attention to 1927. Do you remember as early as that the question came up?

A. No, I do not remember.

Q. Do you remember the conferences referred to in those two diary entries, sir?

A. No, we had conferences on that question but I cannot remember the particular conferences.

Mr. Isseks: Now, Your Honor, at this time, with full [fol. 2438] regard to Your Honor's ruling in the matter, I would like to have these two diary entries marked as the next exhibit number.

The Court: What date?

Mr. Isseks: January 4 and 5, 1927. (Same are marked Government's Exhibit 400, being on one sheet of paper.)

Mr. Isseks: I understand Your Honor will sustain the objection and we have our exception.

Now, at this time I would like to have marked, a letter dated January 21, 1927, photostat of an original, from Mr. Carter to the witness.

(Same is marked Government's Exhibit 401.)

Q. Mr. Smith, I ask you to look at this document and tell us whether you identify the signature at the end thereof as Mr. Carter's?

A. (After examining same.) Yes.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted over objection.

(Said Government's Exhibit 401 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to have marked a letter dated April 1, 1927, from the witness to Henry W. Carter. It has been stipulated as genuine by Hartford-Empire Company.

(Same is marked Government's Exhibit 402.)

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

(Said Government's Exhibit 402 read by Mr. Kramer.)

[fol. 2439] Q. Mr. Smith, you heard that read, did you not?

A. I did.

Q. You wrote the letter?

A. I did.

Q. Did Acme get the extension?

A. That I cannot tell you.

Q. You don't remember whether there was a veto or not?

A. No, I don't, but the records will show.

Mr. Isseks: At this time I would like to have marked, a letter dated May 8, 1929, from the witness to Mr. Carter, Owens-Illinois Glass Company, stipulated as a genuine document by the defendant, Hartford-Empire Company. (Same is marked Government's Exhibit 403.)

I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Mr. Wall: It is a one-page letter. I have no doubt this is the one.

The Court: A two-page letter.

Mr. Isseks: That is right. There must have been a mistake in the stipulation.

Mr. Wall: I think so.

(Government's Exhibit 403 read by Mr. Kramer.)

Q. Mr. Smith, you heard that read, did you not?

A. I did.

Q. You wrote that letter?

A. I did.

Q. You were at the conference referred to therein, with Mr. Levis?

A. Well, I don't doubt it. I have forgotten the particular [fol. 2440] conference.

Mr. Isseks: I would like to have marked at this time, a memorandum dated March 18, 1930, photostat of an original from Mr. Pease to Mr. Safford. (Marked Government's Exhibit 404.)

It is stipulated, Your Honor, as to genuineness.

Q. Mr. Smith, I show you the memorandum and ask you whether or not you identify the signature of Mr. Pease?

A. I do.

Q. And the handwriting up in the right-hand corner is that of Mr. Safford, is it not?

A. It looks like it.

Q. Who was Mr. Pease, in your organization, in 1930?

A. I think by that time he had the title of assistant treasurer, but he was the head of our licensing and leasing department.

Q. Still with your company, is he not?

A. He is.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

(Government's Exhibit 404 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to have marked, photostat of a document stipulated as to genuineness by Hartford, dated May 23, 1930, from Herbert Knox Smith to Lloyd T. Williams, three pages.

The Court: Do you have the original?

Mr. Isseks: It is stipulated as to genuineness. I do not have the original. I assume the original was received by [fol. 2441] the recipient, Mr. Williams, but the copy we have is a photostat of the carbon copy furnished us by Hartford, and stipulated as to genuineness.

The Court: It may be admitted, over objection.

(Government's Exhibit 405 read by Mr. Kramer.)

Q. Now, Mr. Smith, you remember that when your company first made the contract with Owens, Owens was called The Owens Bottle Company?

A. That is correct.

• • • • • • •

[fol. 2442] Q. You answered, then, to my question, that in 1924 your contract with Owens was with the company known as Owens Bottle Company?

A. That is correct.

Q. That company, I think you testified, was one of the largest companies manufacturing glassware in and of itself?

A. Correct.

Q. Another very large company was the Illinois Glass Company at Alton, Illinois?

A. That is true.

Q. Sometime in 1929 or 1930 those two companies got together?

A. They did.

Q. And became a larger company?

A. Oh, they got together, that must be so.

Q. When did that organization acquire Berney Bond, before the merger with Illinois Glass or after?

A. I cannot tell you.

Q. And then after the Illinois got together with Owens, they acquired some more friends, did they not?

A. Well, I cannot tell you when. They did acquire the Berney Bond business.

Q. They acquired the Atlantic Bottle Company, too?

A. That is correct.

Q. That is in the East?

A. Yes, Pennsylvania.

Q. And they acquired some more companies after that, didn't they?

A. Yes, I think they acquired the Winslow Glass Company.

[fol. 2443] Q. If you know, Mr. Smith, what is the total volume of Owens-Illinois production of glassware, glass containers, as compared to all the manufacturers of glass containers in this country?

A. I couldn't tell you that right offhand.

Q. It is the largest, is it not?

A. Yes, I think it is.

Q. And by far? How much larger than the second-largest—Hazel-Atlas?

A. Well, I don't remember those percentages, Mr. Isseks.

Q. I am not talking about feeders, I am talking about volume of business, glass.

A. Well, I wouldn't know. I don't remember offhand.

Q. You do know it is the largest?

A. Yes.

Q. And it was the largest before it took over the Illinois Glass?

A. Well, that was the reputation, but whether it really was or not would have to be checked up.

Q. I want your knowledge as the head of these patent companies.

A. Well, we have always looked upon them as being the largest manufacturers.

Q. The largest in the country, are they not?

A. I think they were then, they may not have been, but a very large manufacturer, and now they are the largest manufacturer.

Mr. Isseks: At this time I would like to have marked a document which has on the top, "Memorandum in re pressed ware, October 28, 1930", signed "Knox Smith", [fol. 2444] and stipulated as comnig from the files of Owens-Illinois Company, at page 5 of the stipulation.

(Same is marked Government's Exhibit 406.)

Q. I ask the witness whether he can identify the signature on the last page of this document found in the files of Owens-Illinois Company?

A. Yes, that is Mr. Knox Smith's signature.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

(Government's Exhibit 406 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to read from a bound volume called "Hartford-Empire Minutes of Directors and Executive Committee, Volume 1, August 11, 1922, to December 20, 1929." I would like to read it, read only one item.

(Reading:) "Minutes of executive committee meeting, Hartford-Empire Company, April 22, 1926. The executive committee met at the Hartford office at 10 a. m. Present: Messrs. Goodwin Smith, Honiss and Knox Smith. Col. Brown by invitation. Swindell Bros. license. Letters of Swindell Bros. and Carr-Lowery, and report of Hiller, were read on competitive status in Baltimore. Voted to decline to license feeders to Swindell Bros. in view of the fact that this would put them into competition with Owens, Illinois, Maryland, Carr-Lowery and Salem."

There are other items I am not going to refer to. Attested Herbert Knox Smith.

Now, I would like to have marked at this time, a letter [fol. 2445] dated November 20, 1930, from Herbert Knox Smith to Lloyd T. Williams, stipulated as a copy of the genuine document by Hartford, at page 19 of the stipulation.

(Same is marked Government's Exhibit 407.)

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Mr. Isseks: Your Honor, at this time I would like to have marked, a memorandum which has on the top, "General conference, Owens-Illinois Company, November 11, 1930." It is five pages. Signed at the end, "Knox Smith".

(Same is marked Government's Exhibit 408.)

Mr. Isseks: It is stipulated as a genuine document, Your Honor, by Hartford.

Q. Mr. Smith, I ask you whether you identify the signature at the end of this photostat?

A. I do.

Q. Knox Smith's?

A. Correct.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It will be admitted, over objection.

(Thereupon Government's Exhibit 408 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to have marked, an original document of three pages, on the letterhead of Owens-Illinois Glass Company, Intra-company correspondence, General Offices, Toledo, Ohio, December 13, 1930. Attention Mr. William E. Levis. Subject: Section 22, General License Agreement with [fol. 2446] Hartford." It purports to be signed "Henry W. Carter, vice-president in charge, Patent License Department".

(Same is marked Government's Exhibit 409.)

Mr. Isseks: The stipulation which Owens has signed with regard to this document refers, on page 19 of the stipulation, to a 1-page document. I think there was a mistake in the stipulation.

Q. I will show the witness the last page of this exhibit and ask him whether he can identify the signature?

A. Mr. Carter's.

Q. And I show you the initials in the upper right-hand corner of the first page. Can you identify them?

A. No, I cannot.

Mr. Isseks: I offer it in evidence.

The Court: It will be admitted, over objection.

(Government's Exhibit 409 read by Mr. Lewis.)

[fol. 2447] Mr. Isseks: Your Honor, at this time I should like to have marked a document, which Your Honor does not have right now, dated February 9, 1931. It is addressed to Mr. Henry W. Carter, and purports to be signed by the witness.

The Clerk: Government's Exhibit No. 410.

Mr. Isseks: It is stipulated as to genuineness by Hartford. I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 410 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I should like to have marked an Agreement Amending Section 22 of Owens-Hartford General License Agreement, dated February 2, 1931, consisting of two pages, and which Your Honor does not have in his book.

Government's Exhibit No. 411.

The Court: Tell me again what this is.

Mr. Isseks: An Agreement Amending Section 22 of Owens-Hartford General License Agreement, dated February 2, 1931.

Q. Mr. Smith, I ask you whether your signature appears on the photostat of the original?

A. It does.

Q. And that of Mr. Levis?

A. I think that is his, yes.

Q. And that of Mr. Knox Smith?

A. That is correct.

[fol. 2448] Mr. Isseks: Your Honor, this amends Section 22 to read as follows:

"Hartford may grant licenses under all the Licensed Inventions without the consent of Owens or its named subsidiaries."

Q. After that 1931 Agreement, did you go to Owens for their consent in connection with the licensing of any manufacturers of glassware in the United States?

A. No, sir.

Q. Are you sure about that?

A. Not to get their consent; there may have been some things I took up with the Owens Company with regard to licenses.

Q. Did you not go to them for their approval?

A. No, because we did not have to.

Mr. Isseks: I offer in evidence the Agreement, Government's Exhibit No. 411.

The Court: It may be admitted, over objection.

Q. Mr. Smith, I direct your attention to the testimony which you gave at page 669 of the record:

"Q. But in any event you felt that because Owens had a plant on the west coast, and nobody else did, you had to get Owens' consent?"

We were talking about Government's Exhibit No. 163, dated March 7, 1933, from yourself to Mr. McNash—and you answered:

"Naturally, they were serving the territory well, had an over-production there, and before we granted this [fol. 2449] license to Hazel-Atlas Company we would naturally take it up with the Owens Company.

"Q. Now, Owens was a manufacturer of bottles, generally, weren't they?

"A. Correct.

"Q. So was Hazel?

"A. Correct, but Hazel had no milk plant.

"Q. Didn't have any milk rights?

"A. No.

"Q. Before you gave Hazel milk rights, you had to get the consent of Owens?

"A. We didn't have to, but we did."

The Witness: That is perfectly true; and as I understood your question just now, Mr. Isseks—perhaps I misunderstood it—it implied that we had to do it legally; and we did not have to do it legally after that was cancelled.

Q. But you had to do it morally?

A. No, it was not morally at all; it was a pure business matter as to whether you would do certain things for licensees, or whether you did not; and there were a number of discussions that we had with the Owens Company about licenses, et cetera.

Q. You are not changing your testimony that you went and got the consent of Mr. Levis before you gave Hazel milk bottle rights?

A. No, I do not wish to change that testimony; provided you will agree with me that there was no legal obligation.

Q. I don't know what legal obligation.

A. There was none.

[fol. 2450] Q. I was not there. You heard what Mr. Carter said to Mr. Levis, did you not, in a memorandum of December, 1930, whatever the exhibit is? You heard it read?

A. Yes, sir.

Q. Did you feel a moral obligation to go to Mr. Levis every time you gave anybody any rights?

A. No, not every time.

Q. Any time?

A. There might have been some situation where I might have felt a moral obligation.

Q. Why did you go to Mr. Levis and get his consent or approval before you gave Hazel-Atlas milk bottle rights on the west coast?

A. I thought I explained that to you, Mr. Isseks. Owens had a plant on the west coast, making milk bottles, and before we extended our license agreement with Hazel and gave them rights, I thought we ought to take it up with Mr. Levis.

Q. You went to Mr. Levis?

A. I did, or to some member of the Owens Company.

Mr. Isseks: I want to call to Your Honor's attention the fact that in Government's Exhibit No. 163, which is a letter of March 7, 1933, from the witness to Mr. McNash, giving Hazel-Atlas certain milk bottle rights on the west coast, there is in Mr. McNash's handwriting, over and above the typewritten words: "Approved by Hazel-Atlas Glass Company"; and then the signature of Mr. McNash, President, the words, "Subject to consultation with [fol. 2451] Owens-Illinois.

Q. Do you not remember there were other occasions when you went to Mr. Levis and asked him for his consent, approval or acquiescence, before you would consider giving anybody else any license rights?

A. I think there were quite a few times, Mr. Isseks, from 1932 on, that I did consult with Mr. Levis. I consulted with many of our licensees from time to time.

Q. Tell us the occasions, first, if you remember, since 1932, when you consulted with Mr. Levis.

A. It is utterly impossible, Mr. Isseks.

Q. Did I understand you correctly to say a number of occasions?

A. Yes, sir.

Q. A number is a word that has a variation of amounts.

A. You can stretch it out or pull it in, just as you want to.

Q. I do not want to stretch it out. I do not want to pull it in. I was not there. Neither was anybody else I know of around here. But we must make a record. Tell us how many times you remember, when you say a number of occasions.

A. It would be pure guess-work, Mr. Isseks; but I would think perhaps from 1932 to 1935 I might have conferred with Mr. Levis six, seven or eight times a year; perhaps a few more times; perhaps a few less.

Q. Take it from 1935 to 1939.

A. I have not had as many conferences with Mr. Levis.

Q. We are talking about the number of occasions.

A. I have not had as many conferences with Mr. Levis [fol. 2452] from 1935 to 1939.

Q. I do not want any misunderstanding. When I said occasions, and you said a number of occasions, we were talking about consultations with him with regard to licensing.

A. I say, general conversations; there might have been a number of subjects that were taken up.

Q. You answered before, when I asked you did you ask for his consent, approval or acquiescence; you said on a number of occasions since 1932 you asked for his consent, approval or acquiescence?

A. No. I do not agree to that.

Q. All right. We must go back. Did you ask for his consent, approval, or acquiescence at any time after the so-called amendment of 1931, dated February 2, 1931, in connection with licensing fields of ware to new people, or to existing people that were licensed?

A. Will you let me put it in my own way?

Q. Certainly.

A. Unquestionably, I did take up with Mr. Levis, as I took up with many other licensees, questions affecting the general conditions of the industry. I unquestionably talked to Mr. Levis some of these times about our taking on a new licensee, and the fields of ware that we would give them; but there was no feeling on our part that we had to get his consent, because that was not so.

Q. You did get his approval before you gave Mr. McNash's company rights on the west coast for milk bottles? [fol. 2453] A. I took it up with him, yes.

Q. You said, both times that you gave the answer, that you took it up with Mr. Levis and other licensees. You said that both times.

A. Wait a minute. That may be misleading. What I wished to imply was that I did meet licensees, off and on, and took up a number of questions with them. I might meet Mr. Mandeville and take up one question, and might not take up the same question with Mr. Levis; and vice versa, all through.

Q. I am going to limit my questions, and I am going to ask you to please answer my questions. Did you take up with Mr. Levis, after February 2, 1931, the question of issuing licenses or extending fields of ware to people in the glassware industry? Yes or no?

A. Sometimes yes, sometimes no.

Q. Did you ever take it up with any other licensee?

A. Oh, I think so, Mr. Isaacks.

Q. Tell me who they are.

A. I cannot tell you.

Q. You said in both answers before that you took it up with Mr. Levis and *other* licensees; name one.

A. Well, I think there were a number of times when I consulted with the heads of our various licensees.

Q. I accept the answer. That is a good answer. Tell me their names.

A. Go down through the list.

Q. Did you take up with Mr. Mandeville the issue as to [fol. 2454] whether you would give a new person a license, or an existing licensee an extension of the fields of ware?

A. No, there were a lot of times we never conferred about it at all.

Q. Did you ever take it up with Mr. Mandeville at all?

A. About granting the license?

Q. Yes, or extending a license.

A. Oh, yes, I think I probably did.

Q. Since 1931?

A. Oh, yes, I think I conferred with Mr. Mandeville since 1931.

Q. About that subject matter?

A. About granting a new license, yes.

Q. Mr. I. J. Collins?

A. Yes, I probably discussed general conditions with him.

Q. I am sorry. I do not think you do it deliberately. You always shift your answer. I am talking about licenses to new people, or extending fields of ware.

A. Well, I think—let us see—1932 is when the Peiler Plunger Patent was established. From then on we were taking on new licensees.

Q. Yes.

A. Now, I don't remember when we were taking on these new licensees of consulting with others in the industry to any extent; but sometimes when we took on a new licensee or expanded his field of ware, I probably would take up with the other licensees, who were interested in that particular field of ware, the question; advise them [fol. 2455] that we were going to extend the license; or, if there were objections, what were the objections. I think that is true.

Q. You said you took it up with Mr. Levis?

A. Not always, no.

Q. Sometimes?

A. Sometimes I discussed general trade conditions with Mr. Levis.

* * * * * * *

Q. Did you take up with Mr. Levis, after February 2, 1931, the issuance of new licenses or the extension of fields of ware?

A. I said sometimes, yes, and sometimes no.

Q. Did you take it up with any other licensee?

A. I certainly consulted with other licensees on certain occasions about certain things, as regards an extension of [fol. 2456] fields of ware; or as regards, probably, some particular licensee asking for something new that he did not already have.

Q. Who? Which people were the other licensees?

A. I think there were a number of them; I don't recall offhand.

Q. See if I can refresh your recollection. We are talking about since February 2, 1931.

A. Yes, sir.

Q. Mr. Mandeville?

A. Yes, sir.

Q. Mr. Ball?

A. Oh, yes.

Q. Mr. McNash?

A. Well, now, wait a minute. Did I ever consult Mr. Ball? Yes, I think the testimony shows we took up the Kerr situation with Mr. Ball.

Q. You took up the Kerr situation with Mr. McNash, too?

A. Yes, sir.

Q. You took it up with Mr. Levis?

A. That is correct.

Q. What about Mr. I. J. Collins?

A. Yes, I think I took things up with him occasionally; certainly, where things affected his company.

Q. Did you ever take it up with your fourth largest licensee, Mr. Underwood?

A. Yes, we had conferences with Mr. Underwood; a great many.

Q. There is no doubt about that. I will stipulate that you talked to him many times. Did you ever ask him for [fol. 2457] his permission before you issued a license to anybody?

Mr. Haight: Objection to the question.

The Court: Overruled. The witness may answer the question.

A. I don't remember, Mr. Isseks. If I did, I cannot recall.

Q. You would remember it if you did, would you not?

A. Not necessarily, no. But I just do not recall having taken that matter up with Mr. Underwood.

Q. Did you ever take up with Mr. Underwood the question of extending fields of ware?

A. No, I don't think I did.

Q. Your largest licensee is Owen-Illinois?

A. That is correct.

Q. Your second is Hazel?

A. Yes, sir.

Q. The third is Anchor-Hocking?

A. Today, it is.

Q. And the fourth is Underwood?

A. Today, it is, yes.

Q. Did you ever take it up with Mr. Rau, of Fairmont, who was your fifth or sixth licensee?

A. No, but some of our people may have taken it up. I do not want to shift responsibility at all, because, as head of the company, I am responsible. But it is true that from 1932 on, most of the negotiations as regards licensing machinery, fields of ware, and so on, were handled by other members of our organization. Now whatever they did, of course, I am responsible for; but there were many of these things going on and many meetings that I personally [fol. 2458] did not sit in, nor have much to do with.

Q. Did you ever talk to any other licensee, other than the ones you said you talked to, namely, Mr. Mandeville, somebody at the Ball Company, Mr. McNash, Mr. Collins, and Mr. Levis, about either new licenses or the extension of fields of ware?

A. I think probably I talked—I cannot remember—I may have talked to the Baltimore people.

Q. Which one?

A. There were four concerns there in one town.

Q. Which one did you talk to, to your best recollection?

A. It would be just guess-work. I would not know.

Q. I will take your guess.

A. I may have talked to the Buck Glass——

Q. Mr. Blunt?

A. Yes, sir.

Q. Mr. Blunt is with the Buck Glass?

A. Yes, sir.

Q. Did you ever talk to anybody else in Baltimore about this subject of either issuing a license or extending a license?

A. No, I don't remember having done so.

Q. The only one you may have—and you said "guess" is Mr. Blunt?

Q. Did you ever talk with Mr. Heuisler, or Carr-Lourey?

A. No, I never met him.

Q. Did you ever talk to Mr. Swindell?

[fol. 2459] A. That is Swindell Bros.?

Q. Swindell Bros.?

A. I have talked to him.

Q. Did you ever talk to Mr. George Collins, who was down at the Liberty Glass, about either the issuance of a new license or the extension of a field of ware?

A. Yes, sir.

Q. Of course you talked to Mr. Houghton, did you not, and to Mr. Falck, about issuing licenses, or extending the fields of ware?

A. Very seldom.

Q. Do you remember anybody else that you talked to?

A. No, I don't remember.

Q. Did you ever talk to a gentleman by the name of Stevenson about the issuance of a license or extending the field of ware?

A. No, sir.

Q. You know who I mean?

A. Yes, sir.

Q. Head of the Glass Association?

A. Yes, sir.

Q. Sure about that?
A. Absolutely.
Q. There is not any doubt about it in your mind?
A. Not in my mind.
Q. How about Mr. Ackerman, the assistant general manager of the Glass Container Association?
A. No, sir.

[fol. 2460] (Morning recess.)

The Court: Proceed.
Q. Mr. Smith, I want to explore this subject that we were discussing a little further. You will recall in connection with giving Hazel-Atlas the milk bottle rights on the west coast, you took the matter up with Mr. Levis?
A. I did.
Q. Did you take that particular situation up with anybody else?
A. Not that I remember. I may have taken it up with Mr. Mandeville.
Q. Did you take it up with any of the other gentlemen you mentioned this morning?
A. Not that I remember.
Q. You testified this morning in connection with the Kerr situation that there had been previous testimony that you took that matter up with the Ball Brothers people?
A. Oh, yes.
Q. The previous testimony was that it was because they had residual rights?
A. That is true.
Q. Do you not also remember that you took up the question of Kerr with Mr. Levis?
A. I undobutedly did.
Q. I direct your attention to Government's Exhibit No. 206, a letter dated July 21, 1933, reading:

"I think Ball Brothers are about to write us a letter requesting that we extend Kerr a limited license for domestic [fol. 2461] household fruit jars.
"Mr. Levis approved of this step on the part of Ball Brothers."

Do you remember taking that matter up with Mr. Levis?
A. I am quite sure I did, Mr. Isseks.
Q. He indicated his acquiescence?

A. I think so.

Q. You say here his approval?

A. Either way.

Q. Then you say: "I am writing you"—Mr. McNash—"to obtain your views before we actually proceed to grant such a license"?

A. I do not doubt that, Mr. Isseks.

Q. Later on Mr. McNash wrote you, in Government's Exhibit No. 207 I believe, and said he thought it was all right?

A. I think that is quite true.

Q. In connection with the Kerr situation, did you take the matter up with anyone else other than Ball, Hazel, and Owens?

A. No, because nobody else had fruit jar rights.

Q. From February 2, 1931, on to 1935, a date you gave us before, how often did you take up with Mr. Levis the matter of a new license or an extension of a license?

A. I have not the least idea, Mr. Isseks.

Q. More than the two occasions we have mentioned?

A. Oh, I think so, yes.

Q. Do you remember what particular companies they related to?

A. No, I would not have any idea.

Q. You said, I think, yes to my question of more than [fol. 2462] two occasions: How many occasions would you say, to your best recollection, between February 2, 1931, and the end of 1935?

A. I just would not have any idea. It would be a pure guess, and would not mean anything, Mr. Isseks.

Q. I will take your guess.

A. Oh, perhaps——

Mr. Williams: Wait a minute. Let us do not have any guessing here. Let him tell what he remembers.

A. I do not remember any specific occasion. I do know I did talk with Mr. Levis and others in the industry.

Mr. Isseks: Please. I am sorry. I move to strike out "others in the industry" at this time. I am trying very hard to get an answer to a particular situation. I respectfully request that the witness be directed to answer my question.

The Court: The motion will be sustained. The witness will answer as near as he can.

A. Then I don't know how many times I did take things up with Mr. Levis.

Q. After 1935 did you take up with Mr. Levis the issuance of new licenses, or the extension of existing licenses?

A. That I cannot answer definitely; perhaps two or three times; perhaps not.

Q. You are not sure whether you took it up at all?

A. My trouble is, I do not recall the specific occasions, you see.

Q. But generally, do you remember that you did, since 1935?

[fol. 2463] A. If I did, it was very, very seldom.

Q. After 1935?

A. Yes, sir.

Q. That is because the last license you issued was issued in 1935, is that not right?

A. Not wholly that, Mr. Isseks. We tried to protect our licensees if they were good customers, naturally. They were serving the trade, and there was over-capacity on some occasions—not all occasions—where we had requests to extend licenses. I think that on some of those occasions we did take it up with the—if it affected a certain plant of the Owens Company in their location, we probably took it up with them, on some occasions, and not on others.

Q. Do you remember generally some instances after 1935?

A. No, I do not.

Q. But you would not deny they did, after 1935?

A. No, sir. Let me repeat, because I am not trying to run away from anything, that from 1932 on, most of the licensing business was handled directly by some of my associates rather than by me.

Q. In the answer you gave two or three answers back, you said you took up probably with the Owens people the extension of licenses after 1935; on some occasions yes; and on some occasions no?

A. I think very few occasions.

Q. After 1935?

A. Yes; but we may have done it.

Q. What about new licenses, applications for new licenses?

[fol. 2464] A. It might have been done or it might not.

Q. You don't remember?

A. No, I just do not happen to remember.

Q. You would not deny you may have?

A. No, I could not deny it.

Q. That takes care of Owens and Levis. Now I want to go to the next gentleman you took the matter up with. You said you might have taken it up, since February 2, 1931, which was the period of my question, with Mr. Mandeville on some occasions?

A. Yes, sir.

Q. You said you might have taken up this question of Hazel-Atlas making milk bottles on the west coast?

A. Oh, yes, I think that is true.

Q. Do you remember any other occasion, or remember any occasion, since February, 1931, that you took up with Mr. Mandeville either the issuance of a new license or the extension of an existing license?

A. I think there were occasions, Mr. Isseks, when we did.

Q. How many occasions, would you say?

A. I think when the question of giving a new license on milk bottles, or in some cases perhaps an extension of the milk bottle rights to some other licensee, we probably took it up with Mr. Mandeville.

Q. Were there more occasions with Mr. Mandeville than there were with Mr. Levis, or less?

A. On milk bottles, I should say probably a few more.

Q. Were there more occasions generally with Mr. Mandeville than there were generally with Mr. Levis that you [fol. 2465] took the matter up?

A. That I really would not know.

Q. Do you remember at all?

A. No; but I would say probably I met Mr. Levis more often than I met Mr. Mandeville.

Q. Did you take up with Mr. Levis more frequently the matter of issuing new licenses or the extension of existing licenses, than you took up with Mr. Mandeville?

A. If we did, it was not many times more; but, in general, I would say probably more times.

Q. Now as to Mr. McNash: you said you took up with Mr. McNash the Kerr situation?

A. Oh, yes.

Q. Did you take up with Mr. McNash after July 22, 1932, any occasions other than the Kerr situation?

A. That I just do not remember, Mr. Isseks.

Q. Will you say you took up any occasion other than the one occasion?

A. There might have been a few.

Q. Were there fewer than with Mr. Mandeville?

A. Oh, yes.

Q. Much less?

A. Yes, sir.

Q. In other words, you took up more matters with Mr. Levis than you did with Mr. Mandeville, and more with Mr. Mandeville than you did with Mr. McNash?

A. Yes, because I have seen very little of Mr. McNash.

Q. The only occasion you remember is the one relating [fol. 2466] to Kerr?

A. That is the only one I recall, but there may have been more.

Q. If there were, they were few?

A. I would think so.

Q. Do you remember the subject matter of new licenses or the extension of old licenses?

A. That I cannot tell you.

Q. In the case of Mr. Mandeville, do you remember it was the extension of existing milk bottle licenses?

A. That would be true, I think.

Q. And not new licenses?

A. We did take on new milk bottle licensees after 1932.

Q. Who was that?

A. It was after 1932 we had Lamb, Universal, and Florida.

Q. You took those up with Mr. Mandeville?

A. Not the question of whether we were going to grant the license. We may have discussed what Universal wanted; or advised Mr. Mandeville that we were going to license the Florida Glass Company. We might have taken those matters up with Mr. Mandeville.

Q. Did you take them up with Mr. Levis?

A. I would say yes, sometimes; sometimes yes; sometimes no.

Q. But you did not take them up with Mr. McNash because he was not in the milk bottle business?

A. I think that is true.

Q. Did you take anything else up with Mr. McNash gen-[fol. 2467] erally other than the Kerr situation relating to fruit jars?

A. I think there was one occasion where there was some conference or some letters written to Mr. McNash about hot mold tumblers; but it is kind of hazy in my mind.

Q. Was somebody asking for the right?

A. I think he was asking.

Q. Hazel?

A. Yes.

Q. You would not need to get his permission?

A. This was not a question of getting permission. It was a question, from our standpoint, whether in granting new licenses, to what extent or what bearing that was going to affect our present licensees. They were good customers. They were paying this large amount of royalties each year. I think on a great many occasions before we granted a new license, we probably advised the licensee in that particular field, or, if we thought it was going to affect him, that we were going to do it.

[fol. 2468] (12 noon, March 21, 1941.)

Q. I am sorry I have got to go over it again?

A. I just don't get what you are driving it.

Q. That is all right. We will take it easy. You have testified that you took up with Mr. McNash the question of the issuance of a fruit-jar license to Kerr when requested by Ball Bros.?

A. No question about that.

Q. Now my question is very specific. Did you ever take up with Mr. McNash the issuance of a new license to anybody else or the extension of an existing license to anybody else, other than the one occasion as to which you testified and as to which there is reference in a document, Government's Exhibit 206? I will take your general recollection.

Mr. Haight: I think, Your Honor please, I don't know if that question will convey to the witness what is in Mr. Issek's mind. I presume he refers to the Kerr situation. He already testified that he had a hazy recollection that he took up with him the question of granting hot-mold tumblers to somebody else.

Mr. Issek: No. He did not say that.

The Court: You may restate your question.

Mr. Isseks: I will restate my question.

No, I will ask to have it read. I think it is clear.

(Question read.)

Mr. Isseks: Now add to that, "Namely the Kerr situation". I think that clarifies it.

A. Now, you will have to give me a little time.

[fol. 2469] Q. Oh sure.

A. As regards granting of a new license, I think we did take up with Mr. McNash the question of the Tygart Valley license.

Q. What did you say to him and what did he say to you?

A. Oh, I haven't any idea, Mr. Isseks.

Q. What was the subject-matter, why you should issue the license?

A. No. I think it probably had to do with the Tygart Valley to come in to the fold, if so something about their rights; it had something to do with the general licensing of the Tygart Valley.

Q. Anything about it being a disturbing company?

A. That I would not know.

Q. Did you take the Tygart Valley situation up with Mr. Levis?

A. I may have, Mr. Isseks.

Q. You have such a good recollection about Mr. McNash I will try to see if you remember about Mr. Levis?

A. No, I don't happen to remember. Of course I would not deny I did.

Q. Did you take it up with Mr. Mandeville?

A. I don't think so.

Q. Now other than the Kerr situation and the Tygart Valley situation, did you take up with Mr. McNash the issuance of a new license or the extension of an existing license?

A. Now, Mr. Isseks, that is a very difficult question for [fol. 2470] me to answer. As far as my memory serves me I don't happen to recall, but there may be letters in our files or in yours to show that my memory is wrong.

Q. You don't remember any other occasion?

A. Offhand, no.

Q. Now, Mr. I. J. Collins—did you take up with Mr. I. J. Collins the issuance of milk-bottle rights to Hazel-Atlas on the West Coast?

A. I would not think so.

Q. Did you take up with Mr. I. J. Collins the proposed giving of a license to Kerr which failed?

A. I may have, but I would not think so, because that did not affect Mr. Collins' business.

Q. Did you take up with Mr. I. J. Collins the issuance of a new license to Tygart Valley?

A. I may have, because I think some of Tygart Valley's field was that field of ware that General Glass was interested in.

Q. Did you take up with Mr. I. J. Collins any other questions of the issuance of a new license or the extension of another license, if you remember?

A. I only make a general answer to that. If it affected something that was going to affect his business or his license, I think the chances are I probably took it up.

Q. Do you remember any other occasion?

A. I think there was a hot-mold tumbler question that got pretty hot.

Q. Somebody else wanted a hot-mold tumbler?

[fol. 2471] A. Yes.

Q. And you took the question up with I. J. Collins?

A. Undoubtedly.

Q. Do you remember who that person was that wanted the rights for the hot-mold tumbler?

A. There were several requests, I think one from MacBeth-Evans and I think probably Bartlett-Collins, but I am not sure.

Q. You took it up with Mr. I. J. Collins?

A. Yes.

Q. Did you take that matter also with Mr. William E. Levis?

A. I don't think so.

Q. Did Mr. Levis' company manufacture hot-mold tumblers?

A. No.

Q. Did you take it up with Mr. Mandeville?

A. No.

Q. Did you take it up with Mr. McNash?

A. No, not with particular reference to Collins.

Q. It is either MacBeth-Evans or Bartlett-Collins, you don't remember which one?

A. I remember MacBeth-Evans was quite insistent on licensing hot-mold tumblers and I have a recollection we did have one or two other requests for a license to make hot-mold tumblers.

Q. You took it up with Mr. Collins?

A. Yes.

Q. What did he say about MacBeth-Evans?

A. I don't think he wanted us to grant the license.

Q. Did you grant the license?

[fol. 2472] A. No. I don't think we did.

Q. Now MacBeth-Evans, he didn't want you to?

A. I think he had good reasons for convincing us that the trade was amply supplied and therefore we did not do it.

Q. Do you remember other occasions? You said there might have been one or two others?

A. No. It is a pure guess.

Q. You mentioned Bartlett-Collins?

A. I think they made the request. I am not sure.

Q. You talked about Bartlett-Collins?

A. Yes.

Q. Did you grant the request?

A. I can't remember. I think Bartlett-Collins has the right to make those tumblers, or a few of them.

Q. You testified you took up with the Ball people the question of the issuance of a license to Kerr?

A. Yes. We had to.

Q. Did you take up with the Ball people the issuance of a license to anybody else or the extension of a license to anybody else since that contract with the Ball people which was executed in 1933, March 25th?

A. Not that I remember.

Q. The only thing which you remember is the one relating to Mr. Collins?

A. Not that I remember.

Q. You never took up any other matter with him?

A. My associates may have.

[fol. 2473] "When you say associates may have, you don't remember any instance in which your associates took it up and then told you about it?

A. No.

Q. Now, did you ever talk to Mr. Houghton about the issuance of another license or extension of an existing license?

A. Not generally at all. I may have mentioned Mr. Houghton in this hot-mold tumbler situation, but that is in evidence.

Q. But it was Jenkins Bros. at Bridgeport wanted to manufacture fruit jars, did you take that up with the Ball people?

A. No. I think what we did at the time they came to Hartford we just referred them to Ball.

Q. You talked to George Collins at Liberty about the issuance of a new license?

A. Yes.

Q. Do you remember the situation in that particular case?

A. I think that was the Knape-Coleman case.

Q. Anything else about that?

A. I may have taken up or I may have talked what the reason was, such as the license we granted the Florida Glass Company for milk bottles.

Q. The Knape-Coleman case, tell us about it.

A. I don't know as I have the facts.

Q. Knape-Coleman wanted a license?

A. They were infringing, using infringing feeders, [fol. 2474] wanted a license. We refused to give it to them. They came to Hartford several times even at our expense. They had no money to speak of. And now they were infringing and we did not grant them a license and they continued to infringe and we brought suit against them.

Q. It was in connection with requests for license you took that matter up with Mr. Levis?

A. I think we did.

Q. He said you could?

A. I said I hope we won't.

Q. And you did not?

A. No.

Q. See if this is correct. You talked more often to Mr. Levis than anybody else as to whether or not a new license should be granted or an existing license extended?

A. I think that may be true, because Mr. Levis was looked upon as a leader in the industry. He knew a great deal about the industry and I think probably between '32 and '35 I probably talked over, in a general way, more matters with him than I did any other one man whom I came in contact with. There were many matters that I discussed in regard to the industry in general with various heads, especially, the executive heads, of our licensees.

Mr. Philbin: May I suggest that the question asked the witness was as to whether he had talked with anyone about these matters more than Mr. Levis. I assume that the question implied with any one of the licensees more than [fol. 2475] Mr. Levis, and was not intended to include the officials of the Hartford Company?

Mr. Isseks: Oh, Yes, and not only that but the question was limited, Mr. Smith, to matters relating to the issuing of licenses and the extension of licenses and not to general conditions in the industry.

Q. Is your answer still the same?

A. Well, I just would not know. I think probably I did.

Q. Do you want to say anything else?

A. No.

Q. Mr. Smith, I want to direct your attention to another subject-matter. Do you remember in the fall of 1931 you met Mr. Levis and Mr. Hazelton, I believe it was in New York, after a general meeting of your own people or perhaps it was after a meeting of a lot of industry people, at which time you and Knox Smith and Mr. Levis and Mr. Hazelton had a long conference about business policies?

A. I don't happen to remember it, Mr. Isseks.

Q. Do you remember that sometime in 1931 there was some question about the general business policy of Mr. Levis with regard to stabilization of the industry?

A. No. I would think naturally in 1931, during the hard times, I might have discussed with Mr. Levis the general condition in industry; what was going to happen; banks were being closed down. It became a very serious situation for everybody.

Q. Do you remember there was some question as to [fol. 2476] whether or not Mr. Levis would show a spirit of leadership and cooperation in connection with an effort to stabilize the industry?

A. No, Mr. Isseks, but that might have been true. I do not happen to remember.

Q. Do you remember Mr. Levis was showing a constructive policy of leadership and cooperation in prices and told you that he was now prepared to cooperate along those lines?

A. No. I think Mr. Levis was fast becoming what you call the leader in the industry.

Q. Don't you remember that Mr. Levis told you that by a quota system they were going to work out an effort to stabilize the price situation?

A. No. I don't happen to remember that.

Q. Don't you remember that he told you,—this is before the decision of the Third Circuit Court of Appeals,—that he had conveyed this thought of cooperation and prices and quotas to Mr. McNash and Mr. McNash said, according to Mr. Levis, that this was a very good idea and it would help the general situation out?

A. No. I just don't remember.

Mr. Middleton: May I inquire the date, and whether it was when the NRA did that thing?

Mr. Isseks: It was two years before the NRA was enacted, if I understand the NRA. Your Honor, of course, is more familiar with it than I am.

Q. Don't you remember at this time Mr. Levis told you [fol. 2477] that McNash was impressed by the spirit of cooperation, that he might come in anyway regardless of what would happen in the Circuit Court of Appeals, but he would insist before he came in there would have to be some assurance that Ball Bros. was coming in?

A. No.

Mr. Isseks: I would like to have the diary of November 11, 1931.

Mr. Goodrich: I did not bring it down this morning. I can get it for you in just a few minutes.

Mr. Isseks: No, I don't think that will be necessary.

Q. It is my recollection,—if I am wrong it will be stricken in some way physically,—that this conference that you had with Mr. Levis took place after a general meeting in some hotel in New York of all of the industry people. Do you remember that?

A. No. I never attended a meeting of all of the industry people.

Q. You said you attended conventions?

A. About two in the 26 years.

Q. Don't you remember there was a meeting in New York in 1931, on Armistice Day, November 11th, at which there was present a lot of people of the industry, at which you and Mr. Knox Smith milled around and said hello to everybody, as would be perfectly natural?

A. No. I have no recollection of any such meeting.

Q. Don't you remember after the meeting, in the afternoon, [fol. 2478] you and Knox Smith had a long talk with Mr. Levis and Mr. Hazelton?

A. No. I just don't happen to remember it.

Q. And that conversation related to a spirit of cooperation in connection with prices and quotas?

A. No. I do not remember.

Q. Don't you remember as part of this talk Mr. Levis said he hoped that Hartford-Empire Company could be used as a means of bringing about a general policy of cooperation?

A. No.

Q. You don't remember that?

A. No.

Q. I can't show you the entry here but I can show you an excerpt, and subject to your being shown the entry at the next session I will ask you to look at the entry for November 11, 1931, and see if that does not refresh your recollection?

A. No. I am sorry, Mr. Isseks, this does not recall anything to me.

Q. You don't say the conference referred to there did not take place?

A. Oh no.

Mr. Isseks: I am not going to ask him any more questions about the contents of the memorandum.

Q. Do you have any recollection talking to Mr. Levis and Mr. Hazelton of the subject-matter set forth in the piece of paper set in front of you, namely, an excerpt of a diary [fol. 2479] entry of November 11, 1931?

Mr. Haight: I object to it. It seems to me that comes exactly within Your Honor's ruling but probably part of the question was within Your Honor's ruling the other day.

The Court: Read the question.

(Question read.)

The Court: He may answer that.

A. I have no recollection of this meeting referred to here.

Q. That is not my question. My question is whether you recall the subject-matter of what is set forth in the piece of paper in front of you?

A. No. I do not.

Q. You would not deny that you talked to Mr. Levis and Mr. Hazelton about the subject-matter set forth in that paper, sometime in the fall of 1931?

Mr. Haight: I will have to repeat my objection.
The Court: He may answer that if he knows.

A. I don't remember ever talking at a meeting with Mr. Hazelton there. I do remember sometime that Mr. Levis wanted us to become a great development company, but when it was or what it was I just can't tell you.

Q. After the conference at which Mr. Levis told you he wanted your company to become a great development company, did he tell you that he wanted it for the purpose of having the development company control the policy of the [fol. 2480] industry generally?

Mr. Haight: Just a moment, has he testified that Mr. Levis said he wanted the Hartford-Empire Company to be a great development company?
The Court: Yes, that is what he said.
Mr. Isseks: That is what he said, yes.

A. I mean he wanted us to grow.

Mr. Isseks: I will repeat the question. Read the question.

(Question read.)

A. My answer is No, I don't remember.

Mr. Isseks: I would like to have the excerpt marked as the next Government's exhibit, and offer it in evidence as Exhibit 412.
Mr. Haight: Objection.
The Court: Objection sustained.
Mr. Isseks: Your Honor, at this time I would like to have marked a letter, six pages, addressed to the witness, dated September 8, 1927, as Government's Exhibit 413. It is stipulated by Hartford as a genuine document from one Beatty. I would like to have marked as the next exhibit, Government's Exhibit 414, the witness' reply to the letter of September 8, which has just been marked Government's Exhibit 413. This is dated September 17, 1927, and is the reply. Both have been stipulated as genuine by Hartford. I offer both of them in evidence.
Mr. Fuller: Are these offered——
Mr. Isseks: For a limited purpose.
[fol. 2481] The Court: They may be admitted over objection.
Mr. Isseks: Would Your Honor wish to suspend at this time? It will take about 10 minutes to read these exhibits.

The Court: Before we suspend, is there a question about the trip that has been planned?

Mr. Isseks: I raised the matter with Mr. Middleton. We will be glad to see Your Honor in chambers, but we can talk about it here if you wish.

The Court: I think what is determined should be within the knowledge of everyone who expects to make the trip.

Mr. Isseks: I raised the question with Mr. Middleton as to the purpose of it. Mr. Middleton can speak about it for himself. It seems to me I, for one, with the work I have to do, would prefer two nights in a bed rather than a sleeper. But Mr. Middleton says it has all been arranged. He says I have heretofore consented. My recollection is I never consented to such a trip, but all I said was the Government has no objection.

Mr. Middleton: Your Honor, I was very much surprised this morning when Mr. Isseks suggested the trip should be put off because there could be no purpose in it. The matter was suggested a long time ago that we felt it would assist the Court and all the parties in understanding this case, when we begin to discuss these mechanisms which are the base of litigation, and Your Honor expressed the desire to go, and it is my recollection that Mr. Isseks at [fol. 2482] that time joined in the thought after it was suggested as being a good thing to do.

The Court: If counsel feels that the purpose of the trip, in view of the mechanisms which will be discussed, will assist counsel a great deal in interpreting later testimony, it may be a good thing to do.

Mr. Middleton: Undoubtedly, Your Honor. That is the only purpose it could have. In fact, I should say it would be necessary for one to see these things to fully understand the discussion.

Mr. Isseks: Of course the Government never raised any question as to the useability and effectiveness of these machines, and our attitude has been, right along, if counsel thinks it will serve a purpose that we would not have any objection. My own thought in the matter is, when I raised the question this morning with Mr. Middleton, was, what would be gained in view of the work we have to do, to go down on a trip like that which will take us so long and keep us away from two good nights of sleep.

Mr. Wall: Your Honor, if this trip were called off we would want to arrange a similar trip and despite of what was said, we are very firmly of the recollection that there was no objection made but it was approved definitely and openly, not only once but repeatedly, since last June.

The Court: If counsel feels there is something to be [fol. 2483] accomplished, the Court won't interfere and we will make the trip tomorrow.

I suspect that there is some record of those that are going to make the trip so that everyone knows the time of leaving?

Mr. Middleton: I think, Your Honor, all of those who have indicated their intention to go have procured the necessary information. I circulated a paper the other day. If anyone has not received that information, they can get their ticket and their Pullman reservation at the Station. The train leaves at 8:15 and there is an extra car on, because they lacked capacity to take care of the group. So you will find no difficulty in getting accommodations in that car. The train leaves here at 8:15 and returns from the St. Louis station Saturday evening at six something and arrives in Toledo about 8 o'clock Sunday morning. Arrangements at the other end—St. Louis—have been made for transportation from the station to a place to have breakfast and a trip to the factory after that.

The Court: The bailiff may recess this case until 10 o'clock next Wednesday morning.

(Adjournment taken until Wednesday, March 26, 1941, at 10 o'clock a. m.)

[fol. 2484] (At 10 o'clock a. m., Wednesday, March 26, 1941, the trial was resumed.)

The Court: You may proceed.

Mr. Isseks: Your Honor, when we recessed we had offered and Your Honor had admitted, the two letters, Government's Exhibits 413 and 414. They were not read. I would now like to have them read.

The Court: They may be read.

(Government Exhibit 413 read by Mr. Kramer, being letter from James M. Beatty to Mr. Goodwin Smith, September 8, 1927.)

Q. I would like to ask the witness one question. You heard that read, did you not?

A. I did.

Q. You received that, did you not?

A. I did.

Q. Mr. Beatty has died since he wrote the letter?

A. Correct.

(Government's Exhibit 414, letter of reply from the witness to Mr. Beatty, dated September 17, 1927, read by Mr. Kramer to the end of the third page, where the exhibit appears as reading: "because we had what appeared to you —— faith in our patent situation.")

Mr. Haight: There is something left out there. It is probably "lack of".

Mr. Isseks: Apparently two words missing, we left it blank.

(The rest of the letter was thereupon read by Mr. [fol. 2485] Kramer.)

Q. You heard that letter read, did you?

A. *You* did.

Q. You wrote the letter?

A. I did.

Mr. Isseks: Your Honor, at the last session inquiry was made by the Government with regard to the states in which Hartford-Empire Company is qualified to do business. Counsel for Hartford have furnished us with that information, and the states in which Hartford is qualified to do business are the following: Connecticut, New York, Ohio, Indiana, Texas, West Virginia and Illinois. I assume, in view of the statement furnished to us, we will not have to put in any other evidence regarding that fact.

The Court: Very well.

Q. Mr. Smith, the last time we were here I asked you some questions about the nature of your company's business in connection with the collection of royalties. How does your company collect royalties from the various licensees?

A. The various licensees keep a record of the kind of ware, the amount of ware, produced on our feeders, or feeders and forming machines, and we have a royalty scale which varies according to the weight of the article made. Those reports come in to Hartford and then the royalty rate is applied, and bill—invoice—is sent to the licensee, and he sends us a check.

Q. The invoice is sent through the mail?

[fol. 2486] A. That is right.

Q. The royalty checks come in from the licensee through the mail?

A. That is correct.

Q. There is not any licensee of yours located in the state of Connecticut?

A. No.

Q. Now, you have title to all your equipment, equipment that is manufactured for you or by you and shipped to the various licensees?

A. That is correct.

Q. You also have title, do you not, to certain of the equipment which some of the licensees had before they became licensees?

A. That is correct.

Mr. Isseks: Now, Your Honor, at this time I would like to have marked as the next Government's Exhibit, an original stipulation signed by counsel for Hartford and by counsel for the Government. The stipulation has attached thereto certain schedules. The stipulation,—which I won't read,—has attached four schedules, one showing salaries and wages paid over a number of years to executives and employees, from 1923 to 1939, inclusive, that is Schedule 1.

Schedule 2 shows annual royalties from 1912 to 1939, inclusive.

Schedule 3 shows amounts received by Hartford in each of certain years by way of license fees, as distinguished from royalties. I will ask the witness a question to show [fols. 2487-2488] that distinction. And they cover the period from 1923 to 1939, and cover license fees for feeders, stackers, conveyors, and so forth.

The 4th schedule shows litigation expenses.

There is a reservation of rights in the stipulation, that the stipulation shall not be deemed to make any admission of any of the facts for the purpose of any other or different suits. The stipulation is signed by Mr. Marshall and Mr. Wall on behalf of Hartford, and by Mr. Freed and by myself on behalf of the Government.

Mr. Wall: Will that be marked as an exhibit?

Mr. Isseks: Judge Haight pointed out,—we want the record to be accurate,—there is a small licensee called American Thermos Bottle Company which is located in the state of Connecticut. I didn't know that.

Q. Is that right, Mr. Smith?

* * * * * * *

[fol. 2489] Q. I will ask the question of the witness. There is a distinction between royalties and license fees?

A. That is correct.

Q. Will you tell the Court what the distinction is?

A. When a licensee wishes to license and lease a feeder or a forming machine or a lehr, we charge a license fee which approximates, in some cases, and in other cases is much below, the cost of producing that machine. The machine is then shipped to the licensee's plant, and when he commences to operate the machine and produces glassware [fol. 2490] by the use of the machine, he then begins to pay us royalty.

Q. A license fee is an initial fee?

A. That is an initial fee, the right to use.

Q. The royalty fee is what you collect annually?

A. That is on the earning power.

Mr. Isseks: The third schedule shows the license fees broken down into feeders, lehrs, stackers, conveyors, I. S. machines.

Q. What are N. N. units?

A. Narrow neck.

Q. P. & B. units?

A. Press and blow.

Q. M. B. units—milk bottles?

A. Probably; I haven't seen it.

Mr. Isseks: Probably Col. Brown will know what it is?

Mr. Brown: That is undoubtedly what it is.

Q. Then Hartford 12 machines?

A. Narrow-neck machines.

Q. Hartford 28?

A. Paste mold machines.

Q. Hartford H machines?

A. That was also a paste mold.

Q. And there is "Plunger Settles and Forehearth"?

A. That was not a machine in itself, but an attachment.

Mr. Isseks: This schedule goes from 1923 to 1939, inclusive, and shows annual license fees for the year 1923 of $128,842.46, and shows the total number of machines in-

[fol. 2491] volved as 36. Taking an intermediate year, 1935, it shows $329,540 of license fees and 93 machines of different types, 22 feeders, 12 lehrs, 13 stackers, 28 conveyors, 14 I. S. machines. Then in 1939, total license fees of $490,732, total machines involved were 154 machines. There is a total here of machines throughout the entire period of 1923 to 1939, inclusive, of 1,529 different machines of all types, including 490 feeders, 375 lehrs, 293 stackers, 216 conveyors, 107 I. S. machines, and other miscellaneous items.

Q. Now, Mr. Smith, all these various types of machines are owned by your company, are they not?

A. Yes. There may be one or two suction machines. That is correct generally.

Q. In addition to that there were other machines, title to which was transferred to your company when certain companies became licensees?

A. That is correct.

Q. Also in this schedule there is listed the sales of parts and machines for the year 1923 as an aggregate figure of $193,207.74; intermediate figure, 1935, is $359,935.60; and the figure for 1939, $604,764.52. I show you these schedules, Mr. Smith, and ask you, by looking at them, and having known they were stipulated to by your counsel, whether they set forth correctly the figures on the various pages?

A. (After examining same.) Well, all I can say is that if these figures were prepared by people at Hartford and [fol. 2492] it is stipulated, they are probably correct. The first one is salary and wages, total salaries and wages combined. I haven't checked them at all.

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Mr. Isseks: I offer the document in evidence with the schedules attached thereto, as Government's Exhibit 415. Has Your Honor ruled on the admissibility?

The Court: They may be admitted.

Mr. Sayles: Over objection.

Q. Mr. Smith, do you remember after the election of 1932 there was considerable discussion of the amendment to the so-called Volstead Act to permit the manufacture of beer in this country?

A. Yes.

Q. Do you remember that preceded the repeal of the 18th Amendment?

A. I don't happen to remember that.

Q. Do you remember that when it became evident, after [fol. 2493] the 1932 election, that there would be a manufacture of real beer as distinguished from near-beer in this country, that there was an expression on the part of one of your licensees that they would like to manufacture beer bottles?

A. Well, I have no reason to doubt it. I think everybody was looking forward to real beer, and unquestionably, from the glass manufacturers' standpoint, it meant additional business to them.

Q. Do you remember which of your manufacturers were licensed to manufacture beer bottles?

A. No, but I think quite a number.

Q. Owens was?

A. Yes.

Q. Anybody else?

A. Oh, yes, I think there were quite a number. Glenshaw —probably 8, 10 or 15.

Q. There were certain, though, that were not?

A. That is correct.

Q. For instance, Hocking did not have the right?

A. No, Hocking had general pressed and table ware.

Q. And Federal didn't have the right?

A. I don't think so.

Q. And Capstan didn't have the right?

A. I don't think so.

Q. Now, of course, I am talking about a period subsequent to the document marked in evidence, dated February, 1931, cancelling Section 22 of the 1924 contract.

A. Yes, it was after that cancellation.

[fol. 2494] Q. Don't you remember Mr. Rieman—you know who he is?

A. Yes.

Q. Who was he,—for the record?

A. He was manager of Capstan Glass Company.

Q. He was the nominal head, was he not?

A. He was the active head of it.

Q. He was a defendant in this case but now associated with Ball Bros.?

A. I don't remember he was. He is now with Ball Bros.

Q. He ceased being a member of the Capstan organization when Anchor-Hocking took over control of the Capstan Co.?

A. I think that is correct.

Q. Don't you remember Mr. Rieman, as the head of the Capstan Company, anticipating this desire which you have indicated with regard to beer, came to you and said, "We would like to manufacture beer bottles"?

A. I have a slight recollection of that.

Q. Well, what happened?

A. I think we gave him the right, but I am not sure.

Q. Would you say unequivocally you gave him the right?

A. I think we did. That is according to my best judgment.

Q. You might be wrong?

A. Yes.

Q. Was anybody else present when you talked to him?

A. I think there must have been, Mr. Isseks.

Q. Who?

A. I don't know. I think in one conference Mr. W. J. [fol. 2495] Belknap was present.

Q. Anybody else, sir?

A. Probably was, but I don't happen to remember.

Mr. Middleton: What year was this?

Mr. Isseks: I am talking about the end of 1932. I am sorry. I thought that was clear.

Q. After the election in 1932 and before the Amendment to the Volstead Act, whatever date it is.

A. Yes.

Q. You have testified Owens had the right to manufacture beer bottles?

A. Oh, yes.

Q. And a number of others?

A. Yes.

Q. Did you consult with Owens before you advised Mr. Rieman that his company could manufacture beer bottles?

A. I cannot tell you definitely. I may have.

Q. Did you consult with the other manufacturers who had the right to make beer bottles?

A. I cannot answer that question.

Q. You are pretty clear you talked to Mr. Levis?

A. I think probably I did.

Q. What did he say and what did you say?

A. Well, that I cannot remember. I think the upshot—I am still under the impression we gave him the right.

Q. You are not clear, though?
A. That is to the best of my belief.

Mr. Isseks: Your Honor, I located this morning, or rather [fol. 2496] one of my associates did, a letter which the witness wrote, which has been stipulated as genuine by Owens-Illinois. We have the original. It is not in Your Honor's book. I don't think we told counsel about it. I would like to show counsel a copy. I will have it marked as the next exhibit.

(Letter of November 28, 1932, from the witness to Mr. Carter, vice-president of Owens, marked Government's Exhibit 416.)

Q. I show you photostat of the original document, Mr. Smith, and ask you whether you wrote that letter.
A. I did.

Mr. Isseks: I offer that in evidence.
The Court: It may be admitted over objection.
Mr. Fuller: We object to it on the ground it is irrelevant, immaterial and incompetent.
The Court: You may have your objection.

(Government's Exhibit 416 read by Mr. Kramer.)

Q. You heard that read, did you not?
A. I did.
Q. You wrote the letter?
A. I did.
Q. Does it refresh your recollection as to your conversations with Mr. Rieman and Mr. Levis?
A. The question came up of the demand, they asked for the right to make beers, and as stated in that letter, if everybody was going to rush into making beers, there wouldn't be enough beer business to go around.
[fol. 2497] Q. Did you take the matter up with Mr. Levis?
A. I think I did, Mr. Isseks.
Q. Did you talk to Mr. Rieman?
A. Yes.
Q. Did you take the matter up with anybody else?
A. I don't know, perhaps somebody else, but just who I cannot tell you.
Q. Well, who?
A. I cannot tell you. I have no clear recollection.

Q. Did you ever give Capstan the right to manufacture beers?

A. I think we did.

Q. You don't know whether you ever did?

Mr. Haight: Yes, that is correct.

Mr. Isseks: They did?

Mr. Haight: Yes. But I cannot give you the date. I will get it for you later.

Mr. Isseks: I thank you very much.

At this time I would like to have marked, the two letters, one dated September 30, 1927, from the witness to Mr. I. J. Collins, photostat of original, stipulated as genuine by Hartford; and letter dated October 26, 1927, from the witness to George Macbeth, of Macbeth-Evans Glass Company, stipulated as to genuineness by Hartford.

Q. I will show you Government's Exhibit 417, Mr. Smith, and ask you whether that is your signature on the photostat?

A. It is.

Mr. Isseks: I offer that in evidence.

The Court: It may be admitted, over objection.

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[fol. 2498] Mr. Fuller: I object on the grounds it is immaterial, irrelevant and incompetent.

The Court: You may have your objection.

Mr. Fuller: And insofar as it purports to set forth, if it does—I haven't had the opportunity to read it—what someone else purports to have said, we object to it on the additional grounds of hearsay. I don't know whether there are such statements in the letter. May I ask from where this letter was received?

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[fol. 2499] Q. Did you send this letter to Mr. Collins, Mr. Smith? I am referring to Government's Exhibit 417.

A. I think I did, Mr. Isseks.

Q. I ask you whether you sent Government's Exhibit 418 to Mr. Macbeth?

A. (After examining same.) I did.

Mr. Isseks: I offer in evidence Government's Exhibits 417 and 418.

Mr. Fuller: Objection has been made as to 418. I ask the document be received over our objection for a limited purpose only, since it purports to set forth what someone has told the writer and the writer is now telling Mr. Macbeth. Clearly hearsay, unless it is for a limited purpose.

The Court: You may have your objection and they will both be admitted.

Q. Did you talk to Mr. Collins about the subject-matter——

A. About the hot-mold tumblers.

Q. Insofar as Macbeth-Evans wished a license in that field?

A. Yes.

Q. What did Mr. Collins tell you?

[fol. 2500] A. Well, I think Mr. Collins stated what he said on a number of occasions to me, that he had been the developer of what they called the hot-mold tumbler process; it was worked out in his plant; it was a thin tumbler, not of the quality of the paste mold tumbler, and yet a thinner and better tumbler than the pressed tumbler; it took Collins several years to get going on it, getting volume business, and he was known as a tumbler house. Federal later took up the same trade.

Those two companies were quite able to supply the trade, they had learned the art of making these thin-walled mold tumblers, had equipment for it, and when Macbeth-Evans asked for a license, why, I naturally took it up with the Hocking Glass Company and with the Federal Glass Company, and told them about the inquiry from Macbeth-Evans.

Q. What did Mr. Collins say? You talked to Mr. Collins, didn't you?

A. Yes.

Q. What did he say?

A. I cannot tell you what he said. He was opposed to granting Macbeth-Evans a license.

Q. Did you ever grant a license to Macbeth-Evans for thin-blown tumbler ware?

A. Yes, we did. I think we did later on.

Q. How much later, do you know?

A. No, I cannot tell you now whether it was thin-blown tumblers. They have a license to make paste mold tumblers [fol. 2501] later on, and put in one of our machines.

Whether we granted them a restricted license later on I have just forgotten, Mr. Isseks.

Q. Macbeth-Evans was later on taken over by Corning, was it not?

A. That is correct.

Mr. Isseks: I would like to have the two letters read.

The Court: They may be read.

(Government's Exhibits 417 and 418 read by Mr. Lewis.)

Mr. Isseks: Now, Your Honor, at this time I would like to offer part of the minutes of the executive committee meeting of May 25, 1925. In the absence of an excerpt, I assume counsel have no objection to my reading the excerpt I am interested in.

"Minutes of the executive committee meeting, Hartford-Empire Company, May 25, 1925. Present: Messrs. Goodwin Smith, Ernest Smith and Knox Smith." I am going to read one heading: "Licenses to Hygeia and Buck Company: 1. As to Hygeia, Mr. Baker's letter of May 20, (a. objects to our extension of the field of ware to things which we have no right to give." The words "no right" are underscored. "(b) He also asks us to suspend action as to the much more important extensions that we do have the right to give until we can discuss it with Owens. 2. As to Buck Company, we have the question whether it is generally wise to give Buck the right to go into the general field other than milks. Both these matters will be deferred [fol. 2502] until Goodwin Smith sees Mr. Boshart on May 28th."

Q. You heard that read, did you not?

A. I did.

Q. Now, Buck Glass Company was entitled under its license to manufacture milk bottles, was it not?

A. Yes.

Q. And at some time prior to 1930 it was given the right, was it not, to manufacture certain other limited kinds of ware but restricted to a specific tonnage?

A. I am not sure whether that is wholly correct. They were given other lines of ware, and there were some restrictions, but I don't know whether that applies to all, I am not sure it applied to all the articles.

Q. Whatever the license states is what it is?

A. Yes.

Q. You testified on another occasion your company had a limited—I think that is the word you used, or "restricted"—I think you used "limited"—membership in the Glass Container Association?

A. That is correct.

Q. Well, what was your understanding, Mr. Smith, in 1930, of the Glass Container Association?

A. Well, it meant the glass manufacturers had formed an association called The Glass Containers Association.

Q. What was your understanding of its purpose?

A. There were active memberships and non-active memberships.

Q. What was your understanding of the active membership and non-active membership?

[fol. 2503] Mr. Luther Day: I suppose this is being received for the limited purpose Your Honor has indicated in connection with other testimony, as showing his state of mind or individual undertsanding.

The Court: His own understanding, yes.

Mr. Luther Day: Yes, that is right.

Mr. Isseks: Your Honor, I would like to point out this gentleman volunteered the statement, in answer to something, I don't remember what,—on another occasion,—that his company was a limited member. If anybody ought to know what the purpose of an association is, certainly it is a member.

The Court: If he knows, his understanding, that is all he can tell.

Mr. Isseks: That is right. I don't see how it could be offered for a limited purpose.

The Court: It wasn't offered for a limited purpose; it was stated to be the witness' understanding.

Q. What was your understanding, as an executive head of a member of the association, as to the purposes of the association?

A. Well, I just couldn't tell you, Mr. Isseks. Here was an association which the manufacturers had formed, I suppose, for the collection of data, discussions in general about the industry as a whole. Now, they did some advertising, promotion, looking toward the increase of glassware, new uses for glass, and that is about all I know.

Q. Now, you said your company had a limited membership?

[fol. 2504] A. Well, not a limited—we never were allowed in any of the meetings. We had no vote as a member; but the paper people and other allied concerns did have what you call a non-voting membership,—I wouldn't know just how to term it.

Q. Did you pay any dues?

A. Not so much in the form of dues as we made yearly payments, which I think went—I am not dead-sure of this —went to a campaign to promote the use of glassware. We have had, at odd times, a campaign to put up vegetables in glass that had previously been put up in tin, and it was, I thought, rather a constructive program.

Q. You were familiar, were you not, with what the association was doing?

A. No, not in detail.

Q. You knew, did you not, in 1930, that the association was responsible for quotas assigned to each manufacturer of glassware?

Mr. Luther Day: This will fall under the same ruling, Your Honor, will it not?

The Court: Oh, yes.

Mr. Isseks: Am very sorry to say I don't understand the ruling.

The Court: Simply gives his understanding.

A. No, I don't know that. Under NRA there was a committee that had definite duties.

Q. I will come to that on another occasion. I am talking about before the NRA.

[fol. 2505] Mr. Isseks: Your Honor, I think I can state to the witness the NRA was not enacted until 1933, and declared unconstitutional sometime in 1935.

The Court: What year are you referring to now?

Mr. Isseks: I am talking about 1930. I am talking about when there wasn't any NRA.

Q. I am asking you whether at that time you didn't know that the Association was fixing quotas of production of its various members?

A. No, I don't think I did, Mr. Isseks.

Q. I show you a letter, stipulated as genuine by Hartford-Empire Company, dated March 7, 1930, written by Mr. Pease to Mr. Carter, and ask you to read it,—marked Government's Exhibit 419. I direct your attention to the fourth full paragraph, and see if that does not refresh your recollection.

A. May I read it all?

Q. Read the whole thing. I direct your attention to the fourth full paragraph.

A. (After witness refers to letter.) All right.

The Court: You may suspend at this point for a 20-minute recess.

(Recess taken.)

[fol. 2506] Q. Mr. Smith, you have read Government's Exhibit 419 from Pease to Mr. Carter dated March 7th, 1930?

A. Yes.

Q. Who is Mr. Pease?

A. He is a member of our company.

Q. What was his position in 1930?

A. I think he spent most of his time in the license and lease division.

Q. Was Mr. Pease in any way connected from your company's angle with the Glass Container Association?

A. No. I don't know what you mean when you said connected.

Q. You said your company had an inactive membership?

A. That is right.

Q. Was anybody in your company charged with responsibility of that inactive membership?

A. No. When the conventions came we always had one or two representatives attend the conventions.

Q. Was Mr. Pease the man who attended?

A. He was one of them.

Q. Who was the other gentleman?

A. Well, it varied. Sometimes I think Mr. Eldred was there. He attended most of them, not all. Sometimes Mr. Hiller went, or some other member of the organization.

Q. Mr. Eldred now is your vice-president and general manager?

A. That is right.

Q. In 1930 he was your general manager?

A. I don't know when the change came but I think 1930 he was assuming the duties of general manager.

[fol. 2507] Q. Pease reported to whom in 1930?

A. I think he probably reported to Mr. Eldred.

Q. And Mr. Eldred reported to you?

A. Yes.

Q. I direct your attention to the fourth full paragraph and ask you if that refreshes your recollection that you knew in 1930 that the Association had allotments which were given to the various members of the Association?

Mr. Day: I object to that. In the first place, it assumes there was allotments. In the second place, the letter is not a letter from the witness but from Mr. Pease to Mr. Carter of Owens-Illinois.

Mr. Isseks: I agree with Mr. Day and I withdraw the question.

Q. I will ask you, Mr. Smith, looking at the fourth full paragraph, whether it does not refresh your recollection that you knew that or understood that the Association was allotting quotas to the various glassware manufacturers in 1930?

A. No. It does not. If they were it probably did not mean very much to me because I never knew anything about allotments.

Mr. Isseks: Your Honor, I offer the document in evidence. It is stipulated as to genuine- by Hartford.

The Court: Who is it from?

The Witness: From Mr. Carter to Mr. Pease, a member of our organization.

Mr. Day: I want to object to it.

Mr. Middleton: It was not stipulated by Owens-Illinois.

[fol. 2508] Mr. Day: I want to object to it on behalf of the Glass Container Association. I wish to enter a general objection on the grounds of incompetency, irrelevancy, and immateriality. The only paragraph that relates to the Association is, "The Buck Company works under the Association allotment as far as its milk bottles are concerned, and I imagine it does as far as its other business is concerned". We take it that it is not offered for the purpose of showing the truth of that statement?

Mr. Isseks: We are not offering for that purpose. We will get Mr. Pease or Mr. Buck in here to find out whether that statement is true or untrue.

Mr. Middleton: May the record show the objection of Owens for the same reasons as stated by Mr. Day, and may it also show this letter was not stipulated genuine as coming from the Owens' files.

Mr. Isseks: We will ask Mr. Carter about it, and I call upon Mr. Middleton now to produce the original of the letter if he can locate it.

The Court: It may be admitted over objection.

Thereupon, Exhibit No. 419 was read to the Court by Mr. Kramer of counsel for the government.

Mr. Isseks: Your Honor, at this time I would like to have marked a letter dated March 11, 1930, from Mr. Pease to Mr. Carter, stipulated as genuine by Hartford, as Government's Exhibit 420.

Q. Do you remember, Mr. Smith, that after the subject matter of Buck's obtaining rights to make shoe polishes came up that you spoke to Mr. Carter about that subject [fol. 2509] matter?

A. No, I do not remember.

Q. I show you Government's Exhibit 420, which has been marked for identification. I will direct your attention to the first full paragraph and see if that does not refresh your recollection?

A. No, but unquestionably I did from what it says there.

Mr. Isseks: We offer the letter in evidence.

The Court: It may be admitted over objection.

Thereupon, Government's Exhibit 420 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, in connection with the Glass Container Association, don't you remember that in 1928 there was some difficulty with regard to the price structure of glass containers?

A. No.

Q. Don't you remember there was some problem with regard to over-production in 1928 in the glass container industry?

A. No, but that might have been true.

Q. Don't you remember that you knew that there was a committee of the members of the Glass Container Association appointed to see what they could do about it?

A. No, but I think—didn't something come up last week, a letter that referred to a committee?

Q. No. That was a diary entry that I showed you and you said it did not refresh your recollection.

Mr. Day: Of course, Your Honor please, I would like to object to the form of the question, "Don't you remem- [fol. 2510] ber?" That assumes something did exist. The question is whether or not he remembers it. If they are asking matters that he knows, that is something different. But he says, "Don't you remember that there was something so and so". It assumes something that is not.

Mr. Isseks: If he remembers, Your Honor, I submit it is a proper question.

The Court: You may proceed.

Q. What is your present recollection as to what transpired in 1928 with regard to the selection of a committee by the Glass Container Association to see what could be done with regard to over-capacity or over-production of the industry?

A. I have no recollection, Mr. Isseks.

Q. You know who Mr. George F. Collins was, do you not?

A. Yes. He was president of the Liberty Glass.

Q. He since died?

A. He died two or three years ago.

Mr. Isseks: At this time I would like to have marked a letter dated May 10, 1928. It is not in Your Honor's book. It is a photostat of a carbon copy stipulated as genuine by Hartford, from the witness to Mr. George F. Collins, president, Exhibit 421.

I am sorry, Your Honor, my associate tells me it is not stipulated.

Q. I would like to show it to the witness and ask him whether he wrote the letter, Government's Exhibit 421, for identification—oh, Your Honor, I am told we obtained this in the last few days pursuant to request made in [fol. 2511] open court, and that is why there has not been any stipulation.

Mr. Wall: That may be. At any rate we have a carbon in our file.

Mr. Isseks: I thank you very much.

A. (Witness reads exhibit.) All right, Mr. Isseks.

Q. Did you read that letter, sir?

A. I did.

Mr. Isseks: I offer it in evidence.

Mr. Day: I want to object to it on behalf of the Glass Container Association, and call Your Honor's attention to the third paragraph. (Reading)

"* * * but I believe it is going to take a considerable amount of time before the situation gets better".

I want to make a general objection and I also want to make a special objection that that statement of opinion is not binding upon the Association or admissible in evidence against the Association as to the statements therein contained, and I take it this is not received for that purpose and not for the purpose of showing the truth of that statement.

* * * * * * *

[fol. 2512] Q. In 1928 when you wrote that letter your company was a member of the Association, was it not?

A. I cannot tell you when we took out a limited membership or non-voting membership. I think probably we were.

Mr. Day: This question may be raised again, if your Honor please, and I want to make the objection.

The Court: It may be offered subject to the further condition that some satisfactory explanation is offered the Court as to the character of organization of the Glass Container Association.

* * * * * * *

[fol. 2513] The Court: Does counsel take the view that a member of the Association—any declarations of his as to the business of the Association is different from a partnership?

Mr. Day: Yes.

The Court: He does?

Mr. Day: Yes. I think that a statement by a member of this Association to another member of this Association would be in law the same as a statement of one stockholder to another so far as it would be binding on a corporation.

* * * * * * *

[fol. 2514] The Court: In the meantime, it will be admitted over your objection subject to some submission of authority.

Mr. Day: That is the question of whether a statement by a member of the Association is binding if made to another member of the Association?

The Court: That is what this statement is here. This is a written statement of a member of the Association to a member of the Association.

Mr. Day: That is it.

The Court: As I gather it.

Mr. Day: Whether that is binding on the Association?

[fol. 2515] The Court: That is right.

Mr. Isseks: I would like to have it read.

Thereupon, Government's Exhibit No. 421 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Mr. Smith, directing your attention to the third full paragraph, what is your present recollection of the plans of the Committee appointed by the Glass Container Association to which reference is made by you in the letter?

A. Well, I have no recollection. Of course I was undoubtedly advised that the Committee had been appointed or else I would not have so stated in this letter to Mr. Collins, but what that Committee's duties were I have no recollection, and I would not, of course,—I have forgotten entirely until I read this that there probably was a committee formed at that time.

Mr. Day: I move to strike out that part of the answer beginning with, "I was undoubtedly advised", on behalf of the Glass Container Association and the other defendants I represent.

Mr. Isseks: May I ask, when you made that statement, you "undoubtedly were advised", was based on your recollection of what took place at that time?

A. No. My point was I would not have written this letter to Mr. Collins referring to a committee appointed by the Glass Container Association unless I so understood at that time a committee had been appointed.

The Court: The objection will be overruled. It may [fol. 2516] stand.

Q. See if I can refresh your recollection as to details. Don't you remember there was a committee of seven appointed of the Glass Container Association?

Mr. Day: I object to the form of that question.

A. No.

The Court: Overruled.

Q. Don't you know the purpose of the committee was to fix prices of glass containers?
A. No.

Mr. Day: I object to that form. I don't think it is proper examination.
The Court: He might say "do you remember".
Mr. Day: Yes.

Q. Do you remember—strike that out. Don't you recall——

Mr. Day: Objection.

Q. Do you remember that the committee that you are referring to had in mind fixing the prices of glassware?

Mr. Day: I object to that.

A. No, Mr. Isseks. I do not.

Q. Isn't it a fact that the committee that you are referring to in that letter considered that there was over-production in the industry and something should be done to bring about a situation where prices would be stabilized?

Mr. Day: I object to the form of it.
The Court: Overruled.

[fol. 2517] A. No, Mr. Isseks. If I don't remember a committee how can I remember what a committee was trying to do?

Q. You don't remember attending a conference at the Belmont Hotel in New York at which were present Mr. I. J. Collins, Hartley of the Turner Company, Mr. Arkell, and Mr. Herbert Knox Smith, in which the conversation was——?

Mr. Day: I object to that form. If I am wrong I would like to know. Let's have this decided or I will keep right on.
Mr. Isseks: All right, sir.

Q. Isn't it a fact that you met Mr. I. J. Collins, Hartley and Arkell with Mr. Knox Smith in New York at the Belmont in the spring of 1928 and discussed this committee that you referred to in your letter?

A. No.

Q. I will now show you a document marked Exhibit 274, as to which an objection has been sustained, a diary entry, April 28th, 1928, and May 28th, 1928, and see if that does not refresh your recollection as to the conference held in the Belmont Hotel?

Mr. Day: Is that the same document that was shown before in which he said it did not refresh his recollection?

Mr. Isseks: Yes, but he did not have the letter at that time. This may be a spark now.

A. No, I can't help at all.

Q. Do you remember who the committee was?

A. No.

Q. Was Mr. Levis on the committee?

[fol. 2518] A. I can't tell you.

Mr. Day: I object. He says he does not remember who the committee was.

Mr. Middleton: There was no committee as far as he knew, so why ask him whether any particular individual was on it.

The Court: The objection will be overruled.

Q. You got the exhibit in front of you, 421, look at the third full paragraph. You refer to the plans of the committee appointed by the Glass Container Association. Don't you remember who was on the committee?

Mr. Day: I object.

The Court: Overruled.

A. I do not.

Q. Was Mr. McNash on the committee?

Mr. Day: I object

The Court: Overruled.

A. I could not tell you.

Q. Was Mr. Levis on the committee?

Mr. Middleton: I object.

The Court: Objection overruled.

A. I could not tell you.

Q. Was Mr. I. J. Collins on the committee?

A. I don't remember.
Q. You don't remember any committee member?

Mr. Emery: Objection.

A. No. I don't know about this committee.
Q. Did you know who that committee was at the time you [fol. 2519] wrote that letter?
A. That I could not answer.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 422 a document, a letter dated April 24, 1928, from one Buck to the witness, stipulated as genuine by Hartford-Empire Company.

Q. I will ask you, Mr. Smith, whether you received that letter, Government's Exhibit 422, in the regular course of business?
A. Yes, Mr. Isseks, I received that letter.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted over objection.
Mr. Isseks: I would like to have it read.

Thereupon, Government's Exhibit No. 422 was read to the Court by Mr. Kramer of counsel for the government.

Q. Mr. Smith, I show you Government's Exhibit 423, original letter dated July 3, 1929, Herbert Knox Smith to Mr. H. C. Mandeville, and ask you whether you identify the signature of Mr. Herbert Knox Smith?
A. I do.

Mr. Isseks: We offer it in evidence.
Mr. Emery: We object to it.
Mr. Isseks: There is no question about the authenticity I assume?
Mr. Emery: Has there been any stipulation made?
Mr. Isseks: I understand it is stipulated by Thatcher. It is an original document. It's got some handwriting on it.

[fol. 2520] Q. Whose handwriting is that on the lower righthand corner, if you know?
A. Here?
Q. Yes, sir.
A. I have not the least idea.

Mr. Isseks: I wonder if there is any question about the authenticity. It is an original document. He can look at it. It came from the files of Thatcher, it is stipulated.

Mr. Emery: I object to the admissibility of the letter as far as any proof of the matter therein stated.

The Court: It may be admitted over objection.

Thereupon, Government's Exhibit No. 423 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, I show you a document which is a photostatic copy of two pages of an original, stipulated as to genuineness by Hartford, both pages in handwriting, dated July 10th, 1929, bears the initials H.K.S., marked Government's Exhibit 424, and I will ask you whether the handwriting on both pages is known to you?

A. Herbert Knox Smith.

Mr. Isseks: Thank you very much. I offer it in evidence.

The Court: It may be admitted, over objection.

Mr. Emery: We object as far as any proof of the matter therein contained is concerned.

Mr. Isseks: It is offered for limited purposes.

[fol. 2521] The Court: It may be received, over objection.

Thereupon, Government's Exhibit No. 424 was read to the Court by Mr. Lewis, of counsel for the government.

Q. I show you a letter dated December 27th, 1929, from yourself to Mr. Mandeville, marked Government's Exhibit 425. This is the original letter, and I will ask you whether that is your signature on the letter?

A. It is.

Mr. Isseks: I offer it in evidence.

Mr. Emery: Same objection to it.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 425 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, I show you a document marked Government's Exhibit 426, one page, purports to be in handwriting, dated 6-6-30, entitled Buck Glass, and ask you whether you can identify from the photostat the handwriting thereon?

A. I think that is Mr. Herbert Knox Smith.

Q. I will ask you to read it and see if it refreshes your recollection, if you attended a conference with Mr. Knox Smith and Mr. C. Buck on or about the date indicated on the memorandum?

A. I have no reason to believe, Mr. Isseks, that I did not attend the meeting.

Q. Do you remember that meeting?

A. Not that particular meeting. I remember meeting Mr. Buck at several meetings, in regard to a good deal of correspondence in which Mr. Buck asked increase from 52,000 gross upwards. Eventually we gave him 65,000 [fol. 2522] gross and then increased the amount again, but I think Mr. Buck made two trips to Hartford in regard to the matter. I am not sure.

Q. Is Mr. Buck still alive?

A. Yes. He is retired.

Q. An elderly gentleman?

A. Well, if that is what you would call elderly.

Q. He is retired anyway?

A. He is retired, yes.

A. And the B. B. referred to is Berney Bond?

A. I would think so.

Q. And Berney Bond was taken over later on by Owens-Illinois?

A. That is correct.

Mr. Isseks: I offer the letter in evidence.

Mr. Emery: Same objection.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 426 was read to the Court by Mr. McCracken, of counsel for the government.

Mr. Isseks: Your Honor, my girls have made a bad translation here and I would like to ask the witness whether he does not agree with me in 3 instead of the word "asked" it should be "cut"—he will not cut prices. What does it look like to you?

A. Well, you could take it either way.

Q. Either "ask" or "cut"?

A. Yes.

Mr. Isseks: All right. I will take it that way. I would like to have counsel produce, if they can, memoranda [fol. 2523] by H.K.S., 11-7-30, File L-1-12.

Q. I show you a letter dater October 26th, 1932, from L. M. Buck to you. This is a photostat of an original, stipulated as genuine by Hartford, and ask you whether you can recognize the signature of Mr. Buck on Exhibit 427?

A. Yes, I received that letter and it was written by Mr. Buck.

Mr. Isseks: I offer it in evidence.

The Court: It may be received, over objection.

Thereupon, Government's Exhibit No. 427 was read to the Court by Mr. Kramer, of counsel for the government.

Q. I show you document marked Government's Exhibit No. 428, which is a photostat of an original dated December 2, 1932, from Mr. Buck to yourself, and stipulated as to genuineness by Hartford, and ask you whether that is Mr. Buck's signature?

A. It is, Mr. Isseks.

Q. Did you receive that letter, sir?

A. I did.

Mr. Isseks: I offer that letter in evidence.

Mr. Emery: I offer the same objection.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 428 was read to the Court by Mr. McCracken, of counsel for the government.

The Court: You may suspend at that point. The bailiff may now recess court until two o'clock.

(Noon recess.)

[fol. 2524] (At 2 o'clock p.m., March 26, 1941, the trial was resumed.)

Q. Will you please look at the document marked Government's Exhibit 429, which is a letter dated January 5, 1933, from L. M. Buck to you, the document being stipulated as genuine by Hartford. Did you receive that letter?

A. I did.

Mr. Isseks: I offer it in evidence.
The Court: It will be admitted, over objection.
Mr. Isseks: I would like to have it read.

(Read by Mr. Lewis.)

Q. I show you letter marked Government's Exhibit 430, dated December 10, 1929, written by yourself to Mr. George F. Collins, of Liberty Glass Company, and stipulated as to genuineness by Hartford, and I ask you whether you received that letter.

A. (After examining same.) I have no doubt I did.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted, over objection.
Mr. Isseks: I would like to have it read.

(Government's Exhibit 430 read by Mr. Kramer.)

Q. I hand you a document marked Government's Exhibit 431, dated December 27, 1929, purportedly written by Mr. Mandeville H. C., to you, and stipulated as to genuineness by Thatcher Manufacturing Company, and I ask you whether you received that letter in the regular course of business.

A. (After referring to same.) I have no reason to doubt [fol. 2525] I did. I don't happen to remember the letter.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted, over objection.

(Read by Mr. Lewis.)

Q. Now, Liberty Glass Company didn't have any restriction on its number of milk bottles it could manufacture, did it?

A. That is true, it did not.

Q. Now, at this time, Mr. Smith, I show you a letter marked Government's Exhibit 432, stipulated as genuine by the defendant, Thatcher Manufacturing Company, from Mr. Mandeville to you, dated December 30, 1929, and ask you whether you received that letter in the regular course of business?

A. (After referring to same.) Yes, Mr. Isseks, I think I did.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Mr. Luther Day: If the Court please, there is a paragraph relating to "forecast." I take it that is not offered for the purpose of showing the truth of the statement?

The Court: Third paragraph of the letter. This is Mr. Mandeville of Thatcher speaking of Mr. Collins of Liberty, "he is over his forecast and we are under it". I would think that information would be within the knowledge of the writer of the letter.

Mr. Isseks: Mr. Mandeville, Your Honor, was chairman of the board of directors of Thatcher Manufacturing [fol. 2526] Company, and I don't think there is any question but that Thatcher Manufacturing Company was a member of the Glass Container Association.

Mr. Luther Day: But a statement by Mr. Mandeville to Mr. Smith as to the "forecast" certainly would not be binding upon the Association. We object to it on behalf of the Association and associated defendants.

The Court: Objection will be overruled.

(Government's Exhibit 432 read by Mr. Kramer.)

Q. Mr. Smith, do you know whether or not Liberty Glass Company built an extra tank in St. Louis?

A. I think they never did.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 433, a memorandum to the witness dated September 25, 1934, re Knape-Coleman Company; purports to be signed by the defendant, R. D. Brown.

The Court: Is there a stipulation as to it?

Mr. Isseks: Stipulated by Hartford as a genuine document.

Mr. Wall: No, as coming from the files.

Mr. Isseks: I am sorry. As coming from the files of Hartford.

The Court: It may be admitted over objection.

(Government's Exhibit 433 read by Mr. McCracken.)

Q. You heard that memorandum read, did you not?

A. I did.

Q. You received it in the regular course of business?

A. There is not any doubt about it in my mind.

[fol. 2527] Q. Now, Mr. Smith, in 1925 and 1926 did

Herbert Knox Smith tell you of a chart that he was working on relating to so-called "dangers"?

A. I think I have a very faint recollection of something.

Q. What was the danger analysis or danger chart about?

A. I cannot tell you what it was. I don't think he ever did it. At least I have never seen such a chart.

Q. Have you ever seen it at all?

A. No, never have, Mr. Isseks.

Q. What does it relate to?

A. I don't know. It might have been—at one time he was getting up a chart of the various fields of ware, also a chart of what we called our contract obligations. I just can't tell you, but I do have a hazy recollection that he did say something like that to me.

Q. Did not the chart relate to the dangers in respect of the anti-trust laws?

A. No, it might have or it might have been a chart he had in mind that we should follow so as not to run into the anti-trust laws, I cannot tell you; but I have just a hazy recollection.

Mr. Isseks: If counsel for Hartford has such a chart analysis, the Government would appreciate it if it was produced.

The Witness: I am quite sure it was never completed. At least I never saw it.

(Statement by Mr. Isseks as to same being referred to in Knox Smith's dairy, which was stricken from the [fol. 2528] record by stipulation.)

Q. Mr. Smith, what has been your company's policy, from its organization until the institution of this lawsuit, in the fall of 1939, with regard to issuing new licenses to manufacturers of glassware?

A. From what date, Mr. Isseks?

Q. When you went with the company in 1915, you said, up to the time this lawsuit was instituted in December of 1939?

A. As regards our licensing policy?

Q. Regarding the issuing of new licenses to manufacturers of glassware.

Mr. Haight: By not objecting to this particular question, I do not want to be understood we are waiving our rights at the proper time to bring to Your Honor's attention that all matters such as this are now moot because of the Hartford modified policy which was set up in our supplemental answer.

The Court: Very well.

(Previous question read.)

A. Why, I think, as a general policy, Mr. Isseks, we naturally wanted good, strong, healthy licensees; we knew that there was over-production, over-capacity in the industry beyond the consumption, and were very careful about issuing additional licenses; and in general most of our licensees could make almost everything—not everything, but we had the general policy that if our licensees could not make money we certainly couldn't [fol. 2529] collect royalties, therefore that would be injurious to us.

Q. Anything else you want to say?

A. I think that is rather a fundamental policy we had.

Q. Isn't it a fact that from 1916 to 1939, where there was an existing manufacturer of glassware in business manufacturing glassware, and not a licensee of yours, you were very anxious to have him become a licensee?

A. Well, I think this: that until we had established our patents, of course, there were a great many manufacturers of glassware using infringing devices. When we did establish our patents we were very glad to have those particular manufacturers come in and take a license.

Q. You have testified already as to Ball Bros., where you never brought a suit, you were always anxious to get them to come in as a licensee?

A. I think that is true, and I think I testified we were always anxious to have Hazel come in.

Q. You also testified you were anxious to get in Kerr, against whom you never filed a suit, and who have refused to come in as a licensee?

A. That is true.

Q. And, similarly, I believe you have testified—I know I asked you the question—you also tried to get in Reed as a licensee, although you sued him in 1930?

A. Yes, that is true, Mr. Isseks.

Q. Isn't it a fact that where there was an existing manufacturer of glassware making glassware on some kind of equipment, you were anxious to get him in as a [fol. 2530] licensee in order to have him pay royalties to your company?

A. I think that may be generally so. There must be some exceptions, I couldn't tell you right offhand what those exceptions were.

Q. Can't remember any?

A. I know I received a number of applications from people who either wanted to go in the business or were thinking of buying an old plant, or something of that sort, and those applications were not in many cases acceptable.

Q. What was your company's policy between your origin, when you first became connected with it in 1915, to December, 1939, with regard to newcomers in the industry, namely, people with new capital who wanted to become licensees of your company?

A. Well, I think in most cases, Mr. Isseks, we took this position, that there was much greater capacity in the industry than there was consumption, and that we wanted to, naturally, have our own licensees make all the money they could and keep in a strong financial situation so they could pay our royalty. I think on those applications, or people who applied to us to put up a new plant, we declined.

Q. Now, let's explore this question about over-capacity of the industry. In 1915 the capacity of the industry was much less, was it not, than in 1925?

A. Oh, yes.

Q. And the capacity in 1925 was much less than it was in 1930, was it not?

[fol. 2531] A. Yes, I think that is true.

Q. And the capacity in 1930 was much less than——

A. Now, wait a minute. You mean the amount of business done? Perhaps I don't understand your question.

'Q. You testified, I believe, that because of over-capacity you were disinclined to give licenses to newcomers. Am I summarizing your testimony correctly?

A. I think that is right.

Q. I am trying to find out whether the capacity of the industry has been static from 1915 to date.

A. No, here were all these people who didn't have the suction process, who came in and used our gob process, and naturally they grew, more machines were supplied to them, more feeders and forming machines and lehrs, so, as the industry grew, the capacity to produce in a great many cases grew faster than the industry, than the consumption.

Q. You were interested in increasing the capacity of your existing licenses rather than giving it to newcomers?

A. I think that is true.

Q. Isn't it a fact that the capacity in 1939 was much greater than it was in 1930?

A. Oh, I think the industry, the normal growth of the industry, has been steadily up, naturally, and to look after that growth, of course, more people—more manufacturers—continued to put in more feeders, more forming machines, and so forth.

Q. You are talking about existing licensees?

[fol. 2532] A. Yes.

Q. Now, do you remember whether you ever gave a new license to a newcomer with new capital?

A. I think we gave it to one or two, or three.

Q. Who are they, please?

A. Well, we had given the Wheaton Company——

Q. Will you spell that, please?

A. W-h-e-a-t-o-n.

Q. Where are they located?

A. In New Jersey, somewhere near Millville, I think.

Q. What year was that license issued?

A. I don't know offhand. It might have been the latter part of '38, somewhere around there.

Q. What is their manufacture?

A. Small vials and knobs.

Q. And was the license limited to certain types of ware?

A. Oh, yes.

Q. Wasn't the Wheaton Company making the same types of ware before the license was granted?

A. I think so.

Q. I am sorry then, you misunderstood me. I am trying to find out whether you ever issued a license to a newcomer with new capital. I understand that you issued a license to Owens; you issued a license to the Knox Company; to Hazel-Atlas, Lamb, Universal, Ball Bros., Brockway, and a number of others; but they were in business before, were they not?

A. They were.

[fol. 2533] Q. Manufacturing glassware, and, to use an expression that has been used in some of the correspondence, "in competition with other glassware manufacturers"?

A. Yes.

Q. I want to find out, did you ever issue a license to a newcomer, with new capital, who wanted to get into the business, use your equipment, pay royalties as a licensee, to manufacture glassware?

A. I don't remember such a case.

Q. Isn't it a fact you never did?

A. I don't think we did.

Q. Isn't it a fact it was your definite policy not to?

A. Well, we had a policy that we never turned down anything until we knew what we were turning down.

Q. Well, we will come to that in a minute. My question is, at any time——

Mr. Haight: Now, wait a minute. Had you finished?

The Witness: Well, I don't think we did want to create—let me put it that way—a lot of extra capacity in the industry. I think that is quite true.

Q. My question is this——

A. And I do not recall that anybody, brand new, out of a clear sky, came to us for a license and was granted a license.

Q. Of course they did come to you?

A. Yes, we received inquiries, and in some instances people would come on to Hartford and discuss the matter with us.

[fol. 2534] Q. But your recollection is clear that you never issued a license to a newcomer, with new capital?

A. I think that is true.

Q. Now, my question is a little broader: Isn't it a fact it was the definite policy on the part of your company not to issue licenses to newcomers in the industry?

A. Yes, Mr. Isseks, if you put it that way, I think that has been true, but only because our own licensees could more than look after the demands of the industry.

Q. All right, now. My next question is, isn't it a fact that that policy was part of the 1924 agreement with Owens?

A. No, I cannot tie that policy up to that 1924 agreement. Of course, under the 1924 agreement, the clause we are talking about, 22, did not permit us to license the Owens patents except to the manufacturers, I think, that were in business from April, '23, to '24.

Q. In other words, under that clause you could not, unless they consented, issue a license to a newcomer, is that right?

A. Under their patents, without getting their consent.

Q. Of course if you could not issue it under their patents you could not issue it under yours, because of the co-mingling?

A. We acknowledged the validity of their patents.

Q. After that provision was cancelled in February, 1931, your policy in that connection continued the same, did it not?

A. No, because there we were limited in an entirely different way. One limit under their patents was to manufac- [fol. 2535] turers who were in existence from April 1, '23 to April 1, '24. That was taken out of the contract and it was left with Hartford to license anybody they saw fit. We licensed, I think there was some concerns that were not in existence in that time, but I am not sure.

Q. But they were manufacturers of glassware?

A. They were when we licensed them, yes.

Q. After the February, 1931, agreement cancelling the Section 22, your policy with regard to newcomers was then the same as it was between 1924 and 1931, was it not?

A. With the brand new newcomers.

Q. That is right.

A. But that, in our minds, didn't have anything to do with the '24 agreement.

Q. Now, your company had, in 1924, did it not, a licensing committee?

A. Yes.

Q. Does it still have it?

A. No. I don't know when we started it. It wasn't an official committee.

Q. Informal?

A. A very informal committee, in Hartford.

Q. Does the committee still continue?

A. Yes, and no; not actively, but when certain matters come up that they feel they need consultations on, why, probably they have a meeting.

Q. Now, when the committee first was created, this informal committee, who was on it, do you remember?

[fol. 2536] A. Well, I was on it, Mr. Eldred was on it, Pease was on it, and I think——

Q. Did the committee continue thereafter, the same committee?

A. Very informally, yes.

Q. Any new members on the committee?

A. I think Mr. Safford, after he came with the company, attended the meetings.

Q. Anybody else, sir?

A. I am not sure whether Col. Brown was what you would call a real member, or just occasionally dropped in.

Q. Anybody else there?

A. No, not that I know of.

Mr. Isseks: At this time I would like to have marked two documents, photostat of original dated March 21, 1925, from one Ross Wilson to the witness, stipulated as genuine by Hartford; and the witness' reply to Mr. Wilson, marked "Confidenial", March 23, 1925, stipulated by Hartford as genuine.

I offer both documents in evidence.

The Court: Who is Ross Wilson?

Mr. Isseks: I will ask the witness.

Q. Do you know who Ross Wilson is?

A. He was an employee of the General Glass, I think it was, at Winchester, Indiana.

Mr. Isseks: Your Honor, the contents of the document will show this gentleman was appyling for a license. I am going through the whole license attitude, showing the efforts [fol. 2537] to get licenses, and the attitude of the defendants therewith. This Mr. Wilson is not a conspirator or alleged to be a conspirator; the letter from him is offered to show the limited purpose with regard to Hartford, and the reply is offered for what the witness states therein.

The Court: It may be admitted over objection.

(Government's Exhibit 434, letter of March 21, 1925, read by Mr. Lewis.)

Q. Now, you heard that letter read, did you not?

A. I did.

Q. And you received it, did you not?

A. I did.

Mr. Isseks: I would like to have Government's Exhibit 435 read.

Mr. Haight: If Your Honor please, for the purpose of the record, if for nothing else, it seems to me, in Your Honor's discretion, these letters should be ruled out, because they are merely cumulative. Mr. Smith has already stated that they, with one possible exception, as I recollect his testimony, did not grant licenses to any newcomers, that is to say, people who had not been in the glass business before, and to that extent that was their general policy. Now, what good is it going to do to take a lot of time and encumber this record with a lot of letters—as I gather that is what Mr. Isseks intends to do, from his statement to Your Honor this last time—to show requests and refusals?

The Court: The complaint, I think, covers this particular [fol. 2538] proposition. I am not certain but there are, as I recall, some six or eight or ten instances set forth in the complaint.

Mr. Isseks: Many more than that.

The Court: Probably more than that.

Mr. Isseks: This particular one that is referred to, I wish to point out, as my recollection of the witness' testimony, it is that at no time did they issue a license to a newcomer, not even in a single instance, but the record will show what is accurate. Certainly Judge Haight can ask the witness right now. On the relevancy, when the question of relief comes up, as it will at the close of this case, the Government hopes, the problem of compulsory licensing is one of the main factors in the case, and it seems to the Government unless there is a record made of the various situations that we have records of,—there may be many more we do not have records of, which were oral,—the Court will not be in position to evaluate the remedy, and particularly the drastic remedy the Government will be asking; and so I respectfully ask that Your Honor admit these documents. While they are cumulative, they are all with regard to different instances, we are not going to repeat any instances, or duplicate anything, and I submit they are very important to show to the Court exactly what took place.

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[fol. 2539] The Court: I think the objection will be overruled. They may be admitted.

(Government's Exhibit 435 read by Mr. Kramer.)

Mr. Isseks: I have now had marked, 436, telegram signed Hartford-Empire Company, apparently by Mr. Eldred to Mr. Baker of the Owens Company, stipulated as to genuineness by Hartford, dated July 13, 1925. I offer it in [fol. 2540] evidence, Your Honor.

The Court: It may be admitted, over objection.

(Government's Exhibit 436 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to offer in evidence a document marked Government's Exhibit 437, consisting of a letter dated July 17, 1925, from Hartford-Empire Company, apparently by Mr. Eldred, assistant to the vice-president, to the North Baltimore Bottle Glass Company, Terre Haute, Indiana, stipulated as to genuineness by Hartford-Empire Company at page 10 of the stipulation. I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

(Government's Exhibit 437 read by Mr. McCracken.)

Mr. Isseks: I would like to have marked, a letter from North Baltimore Bottle Glass Company to Hartford-Empire, dated July 20, 1925, as Government's Exhibit 438. I offer it in evidence. It is stipulated as genuine by Hartford.

The Court: It may be admitted, over objection.

(Government's Exhibit 438 read by Mr. Lewis.)

Q. Now, Mr. Smith, you mentioned a Mr. Hiller before?

A. Correct; one of our engineers.

Q. Does he have something to do with the licensing policy?

A. No.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 439, a memorandum dated July 24, 1925, apparently from Mr. Hiller, stipulated by Hartford as coming from its files, at page 6 of the stipulation.

[fol. 2541] The Court: It may be admitted, over objection.

(Exhibit 439 read by Mr. Kramer.)

Q. You heard that read, did you not, Mr. Smith?

A. I did.

Q. Mr. Eldred at that time was an assistant to you, was he not?

A. He was.

Q. Did he represent the policy of your company when he stated, "I do not for a moment believe that we will be in a position to grant them a license, inasmuch as it is practically the same as starting a new concern on an automatic basis"?

A. I think that is probably correct.

Q. In other words, your policy was not to permit a new concern to go into business on an automatic basis?

A. Unless they were actually in business using infringing feeders.

Q. If they were just a new company and wanted to go into the business, your policy was against them?

A. I think that is correct.

Mr. Haight: You mean by their going into the business, not furnishing them with our equipment.

Mr. Isseks: I take Judge Haight's suggestion.

At this time I would like to have marked as Government's Exhibit 440, document dated August 17, 1925, stipulated as genuine, from one "E. O. H.", of Hartford, to North Baltimore Bottle Glass Company.

Q. Mr. Smith, Mr. Hiller's initials are E. H.?

[fol. 2542] A. Yes, E. O. H.

Mr. Isseks: It has been stipulated as genuine. I offer it in evidence.

The Court: It may be admitted, over objection.

(Government's Exhibit 440 read by Mr. McCracken.)

Q. Mr. Smith, I show you a document marked Government's Exhibit 441, purporting to be a report of visit on stationery of Hartford-Empire Company, and signed "E. O. Hiller", and ask you whether you can recognize the signature of Mr. Hiller on that report of visit?

A. Yes, that is Mr. Hiller's signature.

Mr. Isseks: I offer it in evidence, Your Honor. It is dated August 17, 1925. It says on the top, "North Baltimore Bottle Glass Company."

The Court: It may be admitted over objection.

(Same is read by Mr. Lewis.)

[fol. 2543] Mr. Isseks: At this time I would like to offer in evidence, Your Honor, as Government's Exhibit 442, a letter dated August 26th, 1926, to Mr. Pfau from Mr. Eldred, stipulated as to genuineness by Hartford-Empire Company.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 442 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, did you ever issue a license to the North Baltimore Bottle Company?

A. No. We did not.

Mr. Isseks: At this time, Your Honor, we would like to offer in evidence as Government's Exhibit No. 443 a letter dated September 21, 1925, to Hartford-Empire Company, signed Old Dominion Glass Company. The letterhead shows its offices at Alexandria, Virginia.

At the same time I would like to offer in evidence the next exhibit, 444, the reply from Hartford-Empire Company to the Old Dominion Glass Company of September 23, 1925. Both documents, Your Honor, have been stipulated as to genuineness by Hartford-Empire Company.

The Court: They may be admitted, over objection.

Thereupon, Government's Exhibits Nos. 443 and 443 were read to the Court by Mr. Lewis, of counsel for the government.

[fol. 2544] Q. Did you ever issue a license, Mr. Smith, to the Old Dominion Glass Company?

A. No.

Mr. Isseks: At this time I would like to offer in evidence document relating to the St. Albans Glass Company, the first marked Exhibit 445 is dated August 24, 1925, on the letterhead of St. Albans Glass Company, addressed to Hartford-Empire Company, signed J. Price Warrick.

The next, Government's Exhibit 446, is a reply dated August 29, 1925, and apparently signed by Mr. Eldred.

The next, Government's Exhibit 447, is addressed to Hartford, dated September 3, 1925, attention Mr. Eldred, and signed Mr. Warrick.

And the last, Government's Exhibit 448, is dated September 10, 1925, addressed to St. Albans Glass Company, signed Hartford-Empire Company, apparently by Mr. Eldred, assistant general manager.

The four documents, Your Honor, have been stipulated to as to genuineness by the Hartford-Empire Company at page 11 of the stipulation. I offer them all in evidence.

The Court: That is 445, 446——

Mr. Isseks: —447 and 448, Your Honor.

The Court: They may be admitted, over objection.

Thereupon, Governments Exhibits Nos. 445, 446, 447, and 448 were read to the Court by Mr. Lewis, of counsel for the government.

The Court: We will suspend at that point. The bailiff will now recess court for fifteen minutes.

[fol. 2545] (Recess 15 minutes.)

Mr. Isseks: Your Honor, at this time I would like to have marked a number of documents.

I offer in evidence as Government's Exhibit 449, a longhand letter on the stationery of Wormser Glass Company, dated October 14, 1925, addressed to Hartford-Empire Company, signed Wormser Glass Company, stipulated as genuine by Hartford.

As Government's Exhibit 450 letter dated October 16, 1925, addressed to Wormser Glass Company, apparently signed by Mr. Eldred, stipulated as to genuineness by Hartford. As Government's Exhibit 451, a letter on the stationery of Wormser Glass Company, dated October 19, 1925, addressed to Hartford-Empire Company, signed Wormser Glass Company, stipulated as to genuineness by Hartford.

Another letter, Government's Exhibit 452, Wormser Glass Company stationery, October 26th, 1925, addressed to Hartford, signed Wormser Glass Company.

453 is a reply dated October 29, 1925, addressed to Wormser Glass Company, signed Hartford-Empire Company, assistant general manager.

452 and 453 it is stipulated to genuineness by Hartford.

454, Your Honor, is dated October 30, 1925, memorandum paper to Hiller from Mr. Eldred, stipulated by Hartford as coming from its files.

455 is a telegram dated November 10, 1925, to Hartford [fol. 2546] from Wormser Glass Company, stipulated as to genuineness by Hartford.

456 is a telegram of the same date to Wormser Glass Company from Hartford-Empire Company.

457, Your Honor, is dated the same date, November 10, 1925, to Mr. George E. Howard, Butler, Pennsylvania, signed apparently by Mr. Eldred, assistant general manager.

The last three documents have been stipulated as genuine by Hartford.

458, Your Honor, is not in Your Honor's book inadvertently. It is a telegram to Mr. Eldred from Mr. Howard dated November 12, 1925, with the stamp showing it was received at Hartford and stipulated as to genuineness by Hartford.

459 is a copy of a telegram dated November 12, 1925, to Wormser Glass Company from Hartford-Empire Company. It is stipulated as to genuineness by Hartford. The number in the lower right hand corner is 3464. It is stipulated on page 11 of the stipulation.

460, Your Honor, is a letter on the stationery of Hartford dated November 16, 1925, to Hartford, signed by Mr. Howard. It is addressed to Hartford-Empire Company, Hartford, Connecticut, and it is signed George E. Howard. That, too, is stipulated as to genuineness by Hartford.

I offer Government's Exhibits 449 to 460, inclusive, in evidence.

[fols. 2547-2548] The Court: They may be admitted, over objection.

Mr. Isseks: I would like to have them read.

Thereupon, Government's Exhibits Nos. 449 and 450 were read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Mr. Smith, before I have Government's Exhibit 451 read, I direct your attention to the handwriting on the photostat in the upper right hand corner, and ask you if that is not your handwriting?

A. That is.

Q. And it reads, does it not, "Better write that someone will call next time in Pittsburgh, but doubt if we can do anything for them, F.G.S."?

A. That is correct.

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[fol. 2549] Q. Mr. Smith, did you ever issue a license to the Wormser Glass Company?

A. We did not.

Mr. Isseks: At this time I would like to offer in evidence as Government's Exhibit 461 a letter dated November 25, 1925, addressed to Hartford, attention of the witness, signed Tucker, Reeves & Beatty, and stipulated as to genuineness by Hartford, and one of the two enclosures referred to. There is copy of a letter dated October 20, 1925, from Wormser Glass Company to Messrs. Tucker, Reeves & Beatty as Government's Exhibit 462, stipulated as coming from the files of Hartford at page 6 of the stipulation.

The Court: 461 is a letter of November 25, 1925, from Tucker, Reeves & Beatty to the Hartford-Empire?

Mr. Isseks: Yes, Your Honor. The next exhibit, 462, is dated October 20, 1925, from Wormser Glass Company to [fol. 2550] Messrs. Tucker, Reeves & Beatty.

The Court: They may be admitted, over objection.

Thereupon, Government's Exhibits Nos. 461 and 462 were read to the Court by Mr. McCracken.

[fol. 2551] Q. Mr. Smith, who was the gentlemen by the name of Northend?

A. He has been with our company for a great many years.

Q. What are his duties in your company?

A. Well, he has had various duties. Originally, a draftsman, then he was in the production department. Now he does a little of everything.

Q. In 1930 he had something to do with licensing, did he not?

A. Not very much.

Q. But he was employed by your company at that time?

A. Oh, yes.

Mr. Isseks: Your Honor, at this time I would like to offer in evidence as Government's Exhibit 463 a document dated 10-14-30, on the stationery of Witherspoon-Simpson Glass Company, addressed to Hartford-Empire Company, signed by Witherspoon-Simpson Company, per E. O. Simpson, stipulated as to genuineness by Hartford-Empire Company.

I also offer Government's Exhibit 464, a reply dated

October 17, 1930, signed Hartford-Empire Company, by A. P. Northend.

The Court: They may be admitted, over objection.

(Government's Exhibits 463 and 464 read by Mr. Lewis.)

Q. Mr. Smith, do you know whether your company ever issued a license to Witherspoon-Simpson Glass Company?

A. I think not.

Q. Were you familiar with the Southern Glass Company on the west coast prior to 1931?

A. I think they were a licensee. No, it was later they became a licensee.

[fol. 2552] Q. That company was taken over, was it not, by the Illinois-Pacific Coast Glass Company?

A. It may have been, but I have forgotten, Mr. Isseks.

Mr. Isseks: At this time I would like to have marked four documents relating to one particular applicant, the first, which I would like to have marked as the next exhibit, 465, is a letter dated April 3, 1931, addressed to Hartford-Empire Company and signed C. W. Crowell; as 466, reply dated April 9, 1931, signed Hartford-Empire Company, manager, apparently by Mr. Eldred; as 467, a letter dated April 9, 1931, to Mr. Charles Cole, Illinois-Pacific Coast Company, San Francisco, California, apparently signed by Mr. Eldred; as 468, a letter dated April 15, 1931, addressed to Mr. "Eldreth", manager Hartford-Empire Company, signed C. W. Crowell.

These documents, Your Honor, have been stipulated, as to 465, 466, 467, and 468, as to genuineness by Hartford-Empire Company. I offer the four documents in evidence.

The Court: They may be admitted, over objection.

(Government's Exhibits 465, 466, 467 and 468 read by Mr. McCracken.)

Q. Mr. Smith, do you know whether or not your company issued a license to Mr. Crowell and his associates?

A. We did not.

Mr. Isseks: I now offer in evidence, Your Honor, Government's Exhibit 469, a letter dated June 10, 1931, to Mr. Charles O. Kiefer, addressed at Kew Gardens, Long [fol. 2553] Island, New York, and signed Hartford-Empire Company, by R. N. Eldred, as manager, stipulated as to genuineness by the Hartford-Empire Company.

The Court: It may be admitted, over objection.

(Government's Exhibit 469 read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to offer four documents, the first marked Government's Exhibit 470, is dated October 19th, 1931, memorandum to Mr. Pease, from A. P. Northend, headed "Glass Syndicate, Denver", stipulated by Hartford as coming from its files; the second, marked Government's Exhibit 471, is dated October 22, 1931, addressed to the Glass Syndicate, Denver, Colorado, signed Hartford-Empire Company, by A. P. Northend; the third, marked Government's Exhibit 472, dated November 3, 1931, addressed to Hartford-Empire Company, signed Glass Syndicate, by F. E. Searway; the fourth, marked Government's Exhibit 473, dated November 9, 1931, addressed to Glass Syndicate, Denver, Colorado, signed Hartford-Empire Company, by A. P. Northend. The last three documents have been stipulated as to genuineness by Hartford-Empire Company, at page 20 of the Stipulation, as coming from their files.

Mr. Williams: How about the first one?

Mr. Isseks: Stipulated as coming from the files at page 9 of the Stipulation.

The Court: They may be admitted, over objection.

(Government's Exhibits 470, 471, 472 and 473 read by Mr. Kramer.)

Q. Mr. Smith, did you ever issue a license to the Glass [fol. 2554] Syndicate of Denver?

A. We did not.

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 474 a memorandum dated December 21, 1932, "Memorandum of Interview with Mr. W. B. Ludlum of Los Angeles, California, by A. M. Pease".

Q. I ask the witness who Mr. Pease was in 1932?

A. Well, he was with us, still is in our license and lease department.

Mr. Isseks: I wasn't sure I had asked you that before. I offer it in evidence, Your Honor. Stipulated as to genuineness by Hartford-Empire Company at page 21 of the Stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 474 read by Mr. McCracken.)

The Court: You may suspend at that point. The bailiff may recess court until ten o'clock tomorrow morning.

(Night adjournment.)

[fol. 2555] (At 10 o'clock a. m. Thursday, March 27, 1941, the trial was resumed.)

The Court: Proceed.

Mr. Isseks: At this time, Your Honor, I would like to clear up a situation that was taken up yesterday morning. I would like to have marked, photostat of an original document dated April 13, 1933, addressed to Mr. G. F. Rieman, Capstan Glass Company, signed by Mr. Safford and then approved by Capstan Glass Company by Mr. Rieman.

* * * * * * *

Q. I will ask the witness if he can identify the signature of Mr. Safford on the photostat?

A. I do.

Q. Do you recognize the signature of Mr. Rieman, president of Capstan? [fol. 2556]

A. I think it is his.

Mr. Isseks: I offer this in evidence, Your Honor.

Mr. Filler: If Your Honor please, we make only a general objection to this, but assume that that includes, and want to make it clear this includes, this situation: Capstan is now a subsidiary of Anchor-Hocking Glass Corp. At this time it was not, and was not until the latter part of 1938. So we are relying on that as a basis for our objection. We are objecting to it as binding on us for that reason, and including it in our general objection.

The Court: The exhibit will be admitted, over objection.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 475 read by Mr. Lewis, being dated April 13, 1933.)

Mr. Isseks: Your Honor, at this time I would like to have marked as Government's Exhibit 476, a letter dated January 14, 1933, addressed to Mr. E. G. Ackerman, Glass Container Association, apparently written by Mr. Pease of Hartford; and as Exhibit 477 a letter in reply, dated January 17, 1933, to Mr. Pease from Mr. Ackerman. Both of these documents have been stipulated; 476 has been stipulated by Hartford, on page 21, as genuine. The stipulation relates to a 2-page document but this unquestionably is the same document. Exhibit 477 has been stipulated as to genuineness by Hartford, page 21 of the stipulation.

[fol. 2557] The third document I would like to have marked as Government's Exhibit 478 is a letter dated January 9, 1933, to one Mr. Charles I. Gause, by Mr. Ackerman. I understand from counsel for Hartford they have a copy in their files, although it is not specifically provided for in the stipulation.

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The Court: They may be admitted, over objection.

Mr. Emery: If Your Honor please, as far as any objection is reserved to the Glass Container Association, I ask that the same reservation be made as to the defendants I represent.

The Court: Very well. You may read the document.

(Government's Exhibits 476, 477 and 478 read by Mr. McCracken.)

[fol. 2558] Mr. Isseks: At this time, Your Honor, I offer in evidence as Government's Exhibit 479, a letter dated August 1, 1933, to the Connelly Glass Company, Caney, Kansas, attention Mr. Charles I. Gause, written by Mr. Northend of Hartford. This has not been stipulated. It was furnished to us by Mr. Gause. I understand from counsel for Hartford that they have a carbon copy of the original in their files.

Mr. Wall: That is correct.

Mr. Isseks: I also offer at this time as Government's Exhibit 480, letter dated September 13, 1933, addressed to the Connelly Glass Company, attention Mr. Gause, written by Mr. Eldred. As to this document, too, we obtained it from Connelly Glass Company, but I understand counsel for Hartford have a carbon copy in their files.

The Court: They may be admitted, over objection.

(Government's Exhibits 479 and 480 read by Mr. Lewis.)

Q. Mr. Smith, you remember, do you not, that Three Rivers Glass Company went into receivership?

A. That is correct.

Q. Was it a licensee of yours when it went into receivership?

A. It was.

Q. Did the receiver try to get a new license from you in connection with certain fields of ware?

A. I think he tried to get a license for operating feeders on milk bottles, and we declined.

Q. Do you remember having a conference with the re- [fol. 2559] ceiver, Mr. Henderson Coquat?

A. Yes, I think he came to Hartford.

Q. At your invitation?

A. Well, I have forgotten.

Q. What happened, please?

A. Well, I cannot tell you, Mr. Isseks. He came to Hartford and naturally discussed the Three Rivers situation with us. Just what the conversation was I cannot tell you. I suppose some, or all, phases of the matter were discussed with him.

Q. But you have no further recollection?

A. No.

Mr. Isseks: At this time I would like to offer in evidence as Government's Exhibit 481, a telegram addressed to A. T. Safford, care of Hartford-Empire Company, dated April 14, 1933, from San Antonio, Texas, and signed S. S. Searcy.

As Government's Exhibit 482, a memorandum dated April 29, 1933, apparently signed by Mr. Safford. The telegram, 481, has been stipulated as to genuineness by Hartford, and the memorandum has been stipulated by Hartford as coming from it files.

The Court: 482 is a letter or memorandum?

Mr. Isseks: 482 is a memorandum dated April 29, 1933, which has at the end, "A. T. S." and I just assume that is Mr. Safford.

Q. The only gentleman in your organization with the initials "A. T. S." was Mr. Safford?

A. That I couldn't tell you.

[fol. 2560] Q. I show you Government's Exhibit 482, bearing the initials "A. T. S."

A. I assume that is Mr. Safford's, Mr. Isseks.

The Court: There is not any dispute about it, is there?

Mr. Wall: About the memorandum? I would say, personally, that is Mr. Safford's.

Mr. Isseks: I offer both in evidence.

The Court: They may be admitted, over objection.

Q. Mr. Smith, you heard Government's Exhibit 482 read, did you not?

A. I did.

Q. Does that refresh your recollection of the conference you had with Mr. Coquat and Mr. Safford?

A. I think probably some of those subjects referred to were probably discussed.

Q. Do you remember telling him unless Mr. Collins agreed you could not give Three Rivers a license in connection with milk bottles?

A. No, I don't happen to remember that.

Mr. Isseks: Your Honor, at this time I offer in evidence as Government's Exhibit 483, a letter dated December 31, 1934, addressed to one W. R. Moore, at Montrose, Calif., and signed Hartford-Empire Company, by Mr. Pease, stipulated as to genuineness by Hartford-Empire Company.

The Court: It may be admitted, over objection.

(Government's Exhibit 483 read by Mr. Lewis.)

Q. Mr. Smith, do you remember that sometime in the [fol. 2561] early part of 1935 an application was made to you by a gentleman by the name of Francis M. Smith of San Francisco, who told you he would like to go into the business of manufacturing glassware on the West Coast, namely at San Francisco, and applied for a license?

A. I think a Mr. Smith did apply for a license.

Q. Do you remember what happened?

A. I haven't any idea. About what?

Q. What did you tell him and what did he tell you? Did he come to see you, first of all?

A. I think he did.

Q. At Hartford?

A. Yes.

Q. And you had a conference, did you not?

A. Yes, I think that is correct.

Q. Do you remember what happened, sir?

A. No, I don't. I don't think we ever gave him a license.

Q. You don't remember anything else other than that he came and talked to you?

A. No.

Mr. Isseks: At this time I offer Government's Exhibit 484, memorandum apparently written by the witness, which has at the top "Western Glass Products Co.", with the address, San Francisco, California, and then it states: "Memorandum by F. G. Smith of January 11, 1935", stipulated by Hartford as coming from its files.

The Court: It may be admitted, over objection.

Q. I will ask you one question, Mr. Smith. Do you remember whether you took the matter up with anybody after [fol. 2562] Mr. Francis Smith came to see you regarding a license for Western Glass Products Company?

A. I might have, Mr. Isseks. I don't happen to remember that I did, right off.

Q. Do you have any recollection of taking the matter up with Mr. Levis?

A. No, but I might have done that.

Q. You remember, do you not, that Owen-Illinois had a subsidiary on the West Coast?

A. Oh, yes, and we had licensees on the West Coast, and Hazel had a plant on the West Coast.

Q. Did you take the matter up with Mr. McNash?

A. Not that I remember of right off.

Q. You have any recollection of taking it up with Mr. Levis?

A. No, I have no particular recollection of taking it up with Mr. Levis.

Q. Do you have any recollection of telling Mr. Pease to take the matter up with Mr. Levis?

A. No; I might have.

Q. You don't have any recollection at all?

A. No; the man came on to talk the situation over, and I did that, and declined to give him a license, and that was that.

Mr. Isseks: I would like to have Government's Exhibit 484 read.

Mr. Haight: I think when you ask the witness, you should say which Mr. Levis you mean.

Mr. Isseks: I mean clearly there, Mr. William E. [fol. 2563] Levis.

The Witness: I might have taken it up with Mr. Levis, I just can't remember.

Q. Whenever I refer to "Mr. Levis" I refer to Mr. William E. Levis, not to his counsin, Mr. Preston Levis. You understand that?
A. I do.

Mr. Isseks: So as to avoid confusion, Mr. Preston Levis was president of the Owens-Illinois Pacific Coast Glass Company.
Mr. Haight: The reason I raised the question was because you asked him whether he remembered conferring with Mr. Levis, and it was in connection with the Owens-Illinois subsidiary on the West Coast.
The Court: Proceed.

(Government's Exhibit 484 read by Mr. Lewis.)

Q. Mr. Smith, you heard that memorandum read, did you not?
A. I did.
Q. You wrote it, of course?
A. I assume I wrote it. My initials are on it.
Q. Does it refresh your recollection at all as to what transpired at the conference?
A. No, the only thing that I recall—but my memory was that the breweries wanted to invest in this plant so as to make bottles for their own use.
Q. Anything else?
A. No.
Q. Do you remember Mr. Francis Smith asking you to put [fol. 2564] in writing that you would not give him a license, and you said you saw no reason for doing so?
A. I don't happen to remember that.

Mr. Wall: That is not exactly what the memorandum said. It didn't state he saw no reason for doing so. I think that was an unintentional mistake.

Q. Do you remember Mr. Smith asking you to put in writing a refusal to give him a license?
A. I don't happen to remember, no.
Q. Do you remember taking the matter up with Mr. William E. Levis?
A. No, but I think I may have.

Q. Do you remember telling Mr. Pease you wished to take the matter up with Mr. William E. Levis?

A. I don't happen to remember it.

Mr. Isseks: At this time I would like to offer in evidence, four documents, the first, Government's Exhibit 485, is dated April 16, 1935, some four months after the previous exhibit, addressed to William E. Levis, president, Owens-Illinois Glass Company, Toledo, Ohio, signed by Mr. Pease, of Hartford-Empire Company, consisting of one page, with an attached memorandum, referred to in that letter. The memorandum is dated April 16, 1935, and is entitled, "Proposed San Francisco Plant". I offer both pieces of paper as one exhibit.

The Court: They may be admitted, over objection.

Mr. Isseks: Then I offer as Government's Exhibit 486, memorandum dated April 20, 1935, stipulated as coming [fol. 2565] from their files by Hartford. It doesn't indicate who wrote it but it relates to the same subject-matter of this Company on the West Coast, in San Francisco,—namely the Western Glass Products Company. I offer that in evidence, Your Honor.

Counsel say the only one they do not have is the one attached to the letter addressed to Mr. Levis, namely the letter of April 16, 1935, which encloses a memorandum. The memorandum we have attached to it is of the same date and has on the top "Proposed San Francisco Plant". We offer Government's Exhibit 486.

Mr. Middleton: We wish a special objection on behalf of Owens.

The Court: How do you claim 486 is admissible?

Mr. Isseks: It is stipulated as coming from the files of Hartford-Empire. It is a memorandum in their files, apparently written by somebody connected with the Company.

The Court: Does it deal with the same subject as 485?

Mr. Isseks: It deals with exactly the same subject as Exhibit 485. I direct Your Honor's attention to what has been called to my attention by Mr. Lewis, that on the bottom of 486 are the initials, "R. F. H.", and I ask the witness whether Mr. Hatch's initials are "R. H."

The Witness: Yes, that is right.

Mr. Isseks: The Court has admitted 485?

The Court: I have admitted that.

Mr. Isseks: Counsel is raising a question about Ex-

[fol. 2566] hibit 486. I submit it comes from the files, has the same subject-matter, the Western Glass Products Company, same initials.

Mr. Middleton: 485 is the one to which the memorandum is attached?

Mr. Isseks: That is right.

Mr. Middleton: I think the Court asked you how you considered the memorandum admissible.

The Court: As I understand, the letter connects up the memorandum which is attached, which was sent.

Mr. Middleton: That, I think, is questionable. I wish to have a special objection to that, if this is supposed to have been received by Mr. Levis. I see nothing on the copy to indicate that that is the memorandum referred to in the letter. If these numbers on the pages mean anything, they certainly are not consecutive. At one time in these proceedings that was pointed out as being the reason why the memorandum in question should be the one referred to in the accompanying letter. In this instance before Your Honor does rule on it, we point out that the number on the letter is 4401 and the number on the memorandum is 1446. There is no relation in the numbers.

Mr. Isseks: I wish to point out the reference to Mr. Smith of the Western Glass Products Company, with the enclosed memorandum, refers to the same subject-matter. Of course, if in fact there is a different memorandum at- [fol. 2567] tached to that, I, for one, would appreciate having the original memorandum. Certainly Mr. Levis would be kind enough to furnish us with the original memorandum; he is a defendant in this case.

Mr. Middleton: If the Court please, that is not a sound statement or request. Mr. Isseks is presenting a letter with a memorandum attached, which presumably Mr. Levis received, and which is presented for the purpose of charging Mr. Levis with notice of what was in that memorandum, and in fact making that his statement as a co-conspirator. Now, the burden is upon Mr. Isseks, not upon us, to show that that memorandum is the one that is enclosed. There is not anything we can do about it.

Mr. Isseks: For one thing, may I submit Government's Exhibit 487 shows on its face it is written by Mr. Boeschenstein, a defendant in this case. Mr. Levis passed on to Mr. Boeschenstein a memorandum relating to Messrs. Nichols and Hazlet, and the document attached to 485 shows it is a memorandum relating to Messrs. Nichols and Hazlet.

The Court: When you refer to 487, you refer to the letter of April 22, 1935?

Mr. Isseks: That is right.

The Court: From Harold Boeschenstein?

Mr. Isseks: Yes; to Mr. Pease.

The Court: Wait a minute till I read the letter.

Mr. Middleton: Has that been marked?

[fol. 2568] The Clerk: There have been four marked.

Mr. Middleton: I never heard 487 mentioned in open court, to my knowledge. I have no note on it.

Mr. Isseks: Your Honor, we submit the memorandum on April 16, 1935; by looking at the contents, it is on the same stationery, has the same date, refers to a proposed San Francisco plant, and obviously is the document referred to in the letter of April 16, 1935. I also submit, Your Honor, if there is any other document which was received by Mr. Levis five years ago,—five and a half years ago,—I would certainly prefer the original rather than the copy furnished us by Hartford. That easily could be ascertained by Mr. Levis having some one look in his files.

Mr. Middleton: After all, everything we have in the files has been taken to Washington. We don't even have in our files many things you have in Washington. That has been explained many times. We can prove it any time you desire. We only have a partial list of the things you took to Washington. The rest of them you have in Washington. We don't even have a copy of them.

The Court: I don't believe the Court could be mistaken in the apparent connection between the letter of April 16, 1935, to William E. Levis by Mr. Pease, stating "I am sure the enclosed memorandum will be of interest to you." The memorandum that is proposed to be attached to the letter bears the date April 16, 1935, and refers to the San Francisco proposal of a new set-up there, which of course is the [fol. 2569] thought of the letter of April 16th. The Court will admit it.

Mr. Middleton: May the record show, Your Honor, the exception, of course, to the admission?

The Court: Over objection.

Mr. Middleton: Also show that this instrument is not covered by any stipulation on the part of Owens Company, or Mr. Levis, or any one of the Owens group of defendants, and we have no knowledge of its ever having been received, and we therefore have to deny it was received on that date, the memorandum referred to in the letter.

Mr. Isseks: Do I understand counsel to say that Mr. William E. Levis denies he received the memorandum?

Mr. Middleton: I say that he officially denies, because I think they have to prove it. That is exactly our right in this case.

Mr. Isseks: I call upon Mr. Levis, a defendant in this case, to produce the original letter and the memorandum attached thereto.

Mr. Middleton: I can tell you now, it is not in our files, Your Honor, and I call upon the Government to return the files they have taken from our files.

Mr. Isseks: Does counsel expect the Government to serve Mr. Levis with a subpena duces tecum to produce the document? If so, we will be glad to do so.

Mr. Middleton: Very well, we will be glad to have it.

[fol. 2570] Mr. Isseks: We will do that.

The Court: Proceed.

Mr. Haight: What is the condition of Exhibit 486?

Mr. Isseks: I offer Government's Exhibit 486, stipulated as coming from the files of Hartford.

Mr. Haight: That orphan child.

The Court: That may be admitted, over objection.

Mr. Isseks: I offer in evidence Government's Exhibit 487, a letter dated April 22, 1935, from Harold Boeschenstein, a defendant in this case, to Mr. Pease.

Mr. Middleton: May we, Your Honor, have the same objection and the same agreement with respect to 486? It is a new document to us, and we feel it is not competent.

Mr. Isseks: 487 has been stipulated as to genuineness by Hartford-Empire Company.

The Court: 487 is a letter from Mr. Boescahenstein to Mr. Pease. It may be admitted, over objection.

Mr. Isseks: 488 is a memorandum signed by Mr. Hatch, dated July 15, 1935, subject, "Midway Glass Company"; on the top is July 15; it says, "Copy to Mr. F. G. Smith. Mr. A. M. Pease." At the end is "Mr. R. F. Hatch", dated July 12, 1925. This, too, has been stipulated as to genuineness by Hartford-Empire Company.

The Court: They may be admitted, over objection.

[fol. 2571] (Government's Exhibit 485 read by Mr. Lewis.)

Q. Mr. Smith, you heard Government's Exhibit 485 read, namely a letter from Mr. Pease to Mr. William E. Levis?

A. That is correct.

Q. Does that refresh your recollection you took the matter up with Mr. Levis of the issuing a license to these gentlemen on the West Coast doing business under the name of Western Glass Products Company?

A. No, it does not.

Q. You would not say you did not?

A. No, but I have no recollection of taking it up with him.

Mr. Isseks: I would like to have Government's Exhibit 487 read.

(Government's Exhibit 487 read by Mr. Lewis.)

Q. Mr. Smith, who is Harold Boeschenstein?

A. He was an officer of the Owens-Illinois Glass Company.

Q. In 1935?

A. I think so.

Q. As far as you know he is still a director of that company?

A. As far as I know.

Q. He is now associated in another enterprise, is he not?

A. Yes.

Q. Namely, the Owens Fiber Glass Company?

A. That is correct.

Q. But he is still associated in some capacity with Owens-Illinois, as far as you know?

A. I wouldn't know what his capacity was, Mr. Isseks. He may be a director.

[fol. 2572] Q. Do you know what his official job in April, 1935, was with the Owens-Illinois Company?

A. General manager or general sales manager.

Q. He was an executive of some kind, was he not?

A. Yes. I don't know whether he had a title of vice-president or in charge of sales, or really what; I know he was an officer of the company.

Mr. Isseks: I would like to have Government's Exhibit 488 read.

(Read by Mr. Lewis.)

Q. Mr. Smith, do you know whether your company ever issued a license to the Western Glass Company?

A. I think not.

Q. And to the Midway Glass Company?

A. No, never.

Mr. Isseks: Your Honor, at this time I would like to have marked, seven pieces of paper as Government's Exhibit 489, dated July 10, 1935, addressed to Hartford-Empire Company, on the stationery of Dallas Chamber of Commerce, and signed by one Wallis, stipulated as to genuineness by Hartford.

As Government's Exhibit 490, a letter dated July 16, 1935, to Mr. Wallis, signed by Mr. Pease. That is stipulated as to genuineness by Hartford-Empire Company.

491, dated July 20, 1935, to Mr. Pease from Mr. Wallis; and as 492, a letter dated January 4, 1936, to Hartford, signed by Mr. Wallis. It is "35" but it should be "36". There has been a mistake, apparently the writer just for- [fol. 2573] got the end of the year. I think counsel will stipulate it should be '36, because the reply indicates it should be '36.

Mr. Haight: Counsel for Hartford has already suggested that.

Mr. Isseks: 493 is a letter dated January 14, 1936, obviously in reply to the previous letter, to Mr. Wallis, signed by Mr. Pease.

494 is a letter dated February 8, 1936, to Hartford, signed by Mr. Wallis. The last in this group, Government's Exhibit 495, is dated February 18, 1936, to Mr. Wallis, signed by Mr. Pease.

All these documents have been stipulated as to genuineness by Hartford. I offer them all in evidence, Your Honor.

Mr. Middleton: Objection.

The Court: They may be admitted, over objection.

(Government's Exhibits 489, 490, 491, 492, 493, 494 and 495 read by Mr. McCracken.)

The Court: You may suspend at this point. The bailiff may recess court for 20 minutes.

(Short recess.)

[fol. 2574] Q. Mr. Smith, there has been an exhibit marked, dated some time I believe in 1930, consisting of a letter you wrote to someone at Owens with regard to a gentleman by the name of Schwenzfeier. Do you remember that?

A. Yes.

Q. You hired him some time I believe in 1930?

A. I know he worked for us some time around that time.

Q. What were the nature of his duties, sir?

A. I can't tell you in detail, Mr. Isseks. He visited a number of plants for us and just what he did I can't tell you.

Q. Don't you remember some time in 1935, at the end of the year, you were having talks with him in regard to the efforts on the part of a group in Detroit to put up a glass plant?

A. I think that is true.

Q. What is your recollection of what transpired?

A. I can't tell you in detail. I know there were some people from Detroit considering putting up a glass plant. I think they came to Hartford perhaps once or twice, or as far as I know, three times. I had very little to do with the matter, and I think the question was thoroughly gone over similar to some of these requests, the amount of money involved, equipment, market,—I have no detailed recollection of just what took place except there were people in Detroit approached us in regard to a license.

Q. Mr. Schwenzfeier was employed by your company, was he not?

A. By the Hartford-Empire Company for—I can't tell you just how long, that is five or six years.

[fol. 2575] Q. What were his duties; was he supposed to be a contact man?

A. Along the mechanical lines, yes.

Q. Do you remember talking to the Detroit group yourself?

A. I think once when they were in Hartford I dropped in the office while they were there and sat down and talked to them, but I did not carry on the active negotiations.

Q. Now Detroit doesn't have any glass plant, does it?

A. That is true.

Q. It has several large manufacturers of pharmaceuticals, does it not?

A. I think there are one or two there anyway.

Q. It also has the average number of breweries?

A. Well, I don't know. I assume they might.

Q. What is your recollection of a conference you attended with the Detroit people?

A. I have no detailed recollection, Mr. Isseks.

Q. I understand that, sir. You have never had any detailed recollection of anything, is that right?

Mr. Middleton: I move to strike out the question.

A. I don't think that is wholly true.

Q. You don't have any detailed recollection about this conference?

A. No. Well, I think they came on, and I think I did meet with them once.

Q. Do you have any general recollection?

A. They came on to negotiate for a license, and that is handled by my associates.

[fol. 2576] Q. Who are they?

A. Mr. Eldred, Mr. Pease. Whether Mr. Safford met them or not, I could not tell you.

Q. You knew of their coming before they came, did you not?

A. That I would not know, no. I did know the negotiations were going on, and I am not too sure that I even met them, but I think I have a hazy recollection of once when they were there anyway of dropping in either into Mr. Eldred's office or Mr. Pease's office and introduced them and probably sat down for probably ten or fifteen minutes.

Q. Before they came did you take the matter up with Mr. Levis?

A. That I could not tell you, Mr. Isseks.

Q. See if I can refresh your recollection what happened at the conference. Don't you remember in addition to yourself, Mr. Eldred and Mr. Pease, Colonel Brown was present?

A. No, I would not recollect that.

Q. Don't you remember suggestion was made by you or someone in your group that rather than put up a new plant in Detroit they go out and buy a plant, get the tonnage that way, and then move the plant to Detroit?

A. No, I would not recollect that.

Q. Don't you remember they suggested they buy the plant of the Hart Glass Company at Dunkirk, Indiana, and then move the plant to Detroit?

A. No, I don't remember that.

[fol. 2577] Q. Don't you remember that one of the reasons you said they should do that rather than build up a new plant was that you were anxious to avoid the enmity of Mr. Levis?

A. No. I don't remember that.

Q. Isn't it a fact that you told them that you could not issue a new license to newcomers because if you did the Owens-Illinois people would not like it?

A. No, I have no recollection of that.

Q. See if I can refresh your recollection by some documents.

Mr. Isseks: At this time, Your Honor, I would like to have offered in evidence as Government's Exhibit 496 a letter dated January 27, 1936, written by one George E. Day from Detroit, Michigan, to Hartford-Empire Company, attention Mr. Pease. There is no stipulation on this, Your Honor, but I will show counsel for Hartford the exhibit.

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[fol. 2578] The Court: Very well. That may be admitted, over objection.

Mr. Isseks: We offer in evidence photostat of an original letter dated February 1, 1936, from Mr. Pease to Mr. Day, Government's Exhibit 497.

Q. I will ask the witness to look at the photostat and see if he can identify the signature as that of Mr. Pease?

A. It is.

Mr. Isseks: This is not stipulated. It is a photostat furnished us by Mr. Day.

The Court: It may be admitted, over objection.

Mr. Isseks: The next one I would like to offer, subject to the same qualifications I made before, and specifically not to include the handwriting thereon. It is a letter dated February 6th, 1936, addressed to Hartford-Empire Company, attention Mr. Pease, apparently written by Mr. Day. It is a photostatic copy of his carbon copy. I offer it subject to these qualifications, and without the handwriting thereon. I expect to use the handwriting to refresh the witness's recollection. That is Exhibit 498.

The Court: It may be admitted, subject to objection.

Mr. Isseks: I would like to now offer a telegram, Exhibit [fols. 2579-2580] 499, dated February 9, 1936, from Mr. Pease to Mr. Day, apparently sent to Mr. Day in New York, and I offer that, too, Your Honor, subject to the same qualification, namely, I will have it identified by Mr. Day, and counsel for Hartford will see if they can locate their carbon copy.

The Court: It may be admitted, over objection, subject to qualification.

Mr. Isseks: I next would like to offer Government's Exhibit 500, copy of a carbon copy of a letter dated February 18, 1936, from Mr. Day to Hartford-Empire Company, attention Mr. Pease. I offer this one, too, Your Honor, subject to the qualifications.

The Court: It may be admitted, subject to qualifications and over objection.

* * * * * * *

[fol. 2581] Mr. Middleton: We did not realize, Your Honor, the Court was intending to rule now on these, but I wish the objection to Owens-Illinois and the Owens group of defendants to this group of exhibits, 496 to 500, inclusive, and any testimony with respect to them for the added reason this all appears to have occurred subsequent to the cancellation of the agreement between Owens and Hartford-Empire, which occurred in 1935, as the Court has been advised previously.

The Court: Very well.

Mr. Isseks: Does Your Honor admit Exhibit 500 under qualifications?

The Court: Yes.

Mr. Isseks: I offer Government's Exhibit 501, another document, subject to the same qualification, dated February 26th, 1936, addressed to Hartford-Empire Company, attention Mr. Pease, purports to be signed by Mr. Day.

Mr. Middleton: May it be understood the objection I just voiced may go to this exhibit and to any others which may be presented dated subsequent to 1935?

The Court: Yes.

Mr. Isseks: We offer Exhibit 502, a letter dated February 28th, 1936. This is a photostat of an original. I will show it to the witness. It is addressed to Mr. Day, signed by Mr. [fol. 2582] Pease. It has some pencil notations thereon which are not being offered at this time, but the document other than the pencil notation I offer after I have the witness identify the signature of Mr. Pease.

Q. Is that the signature of Mr. Pease?

A. It is.

Mr. Isseks: I offer Exhibit 502 without qualifications.

The Court: It may be admitted, over objection.

Mr. Isseks: Does Your Honor wish me to defer reading the documents until some other time?

Mr. Haight: We will save a lot of time.

Mr. Isseks: I am perfectly willing.

The Court: Well, you may defer reading them.

Q. I want to show the witness one piece of paper to refresh his recollection. I show you Government's Exhibit 498 which has been admitted subject to qualification, which does not include the handwriting thereon, and I will ask you to look at the handwriting, particularly the handwriting in the lower left hand corner, and see if that does not refresh your recollection with regard to the conference that you had with the Detroit people in February, 1936. It might help your eyes, Mr. Smith, I will show you a translation. It is very difficult to read that small photostat.

A. First of all, I have no idea whose the handwriting is.

Q. I don't question that at all, Mr. Smith, but I am trying to see if you can remember by looking at it what transpired at the conference that you said you had some recollection [fol. 2583] about?

A. No, I can't, Mr. Isseks.

Q. I will direct your attention to one other phrase there. I direct your attention to the handwriting on the right hand side to see whether that refreshes your recollection of what transpired?

A. No, I can't tell you even now. It might have been that somebody had advised some member of our company that Hart Glass Company was for sale, and somebody might have suggested that, but I have no recollection of it.

Q. I direct your attention to another line, the last line on the right hand side of the handwriting, and see whether that refreshes your recollection as to what transpired at this conference?

A. No, it does not, Mr. Isseks.

Q. Do you have any recollection whatsoever other than that which you already testified to, as to what transpired at the conference with the Detroit people?

A. No, I have not. I think I told you in the first place all I recollect.

Q. Did you ever give a license to anyone to manufacture glassware and put up a plant in or about the Detroit area?

A. No, we did not.

Mr. Isseks: Now, at this time, Your Honor, I would like to have marked as Government's Exhibits 503 and 504, two photostatic copies of letters on the stationery of the Glass Container Association, one dated January 16, 1937, [fol. 2584] to Mr. Pease, signed by Mr. Ackerman, stipulated as to genuineness by Hartford, Exhibit 503. I also would like to offer in evidence as Government's Exhibit 504, photostat copy of a letter dated February 11, 1937, to Mr. Pease, signed by Mr. Ackerman, stipulated as to genuineness by Hartford.

Mr. Middleton: Owens would like a special objection to this on the same grounds that I stated.

The Court: Very well.

Mr. Day: We want to make a general objection.

The Court: It may be admitted, over objection.

Mr. Day: I want to state that we raise no question as to the authenticity now.

Mr. Isseks: Thank you.

Thereupon Government's Exhibits 503 and 504 were read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, do you know whether or not your company gave a license to the Memphis Glass Manufacturing Company, Memphis, Tennessee?

A. We did not.

Q. Mr. Smith, do you have any recollection of any conversation with Mr. William E. Levis in the summer, say in July, 1937, with regard to the desire on the part of someone to put up a glass plant in some territory where the Owens-Illinois Company was not located?

A. Are you referring to this Detroit inquiry?

Q. I don't know. My correspondence that I have says [fol. 2585] apparently that some time in the summer of '36, —I am talking about a year later—unless it was that same thing, I don't know.

A. Of course I have no way of knowing.

Q. Of course you knew Owens-Illinois was doing business in Detroit in 1933, '34, '35, '36, and way back in 1925?

A. I would assume so.

Q. I am talking about new territory, some territory Owens were not in yet?

A. No, I have no recollection of any particular conversation.

Q. You would not say you did not have?
A. No, I would not, Mr. Isseks.

Mr. Isseks: At this time, Your Honor, I would like to have marked Government's Exhibit 505, a copy of a letter stipulated as to genuineness by Owens-Illinois Company, at page 26 of the Stipulation, dated July 15, 1937, Mr. R. F. Hatch, Hartford-Empire Company, Hartford, Connecticut, apparently signed by J. E. Naylor.

Q. Mr. Smith, who is Mr. Naylor, if you know?
A. Mr. Naylor holds a position with the Owens-Illinois Company.
Q. He took over the job Mr. Carter had when Mr. Carter resigned?
A. I would not know.
Q. As far as you knew, in 1937 Mr. Naylor was connected in some capacity with Owens-Illinois?
A. I think that is true.

[fol. 2586] Mr. Isseks: I offer this letter in evidence, Your Honor, Government's Exhibit 505.
The Court: It may be admitted, over objection.
Mr. Isseks: I would like to have it read and then I am going to ask the witness a question.

Thereupon, Government's Exhibit 505 was read to the Court by Mr. Lewis, of counsel for the government.

Mr. Haight: I don't know what Mr. Naylor's position in respect to this case is, but I take it that this letter is received for a very limited purpose such as Your Honor has indicated, because manifestly it was not evidential against the Hartford Company.
The Court: Of course the Court stated it was admitted over objection.
Mr. Haight: I meant that limitation.
The Court: That is right.

[fol. 2587] (12:10 p. m.)

Q. Mr. Smith, you heard that letter read, did you not?
A. I did.
Q. Perhaps you would like to look at it, too. (Handing to witness.) Does that refresh your recollection as to any conversations you had in 1937, more specifically in July, 1937, with Mr. Levis, with regard to the contemplated expansion in certain territory by Owens-Illinois Company?

A. No, Mr. Isseks, I could not tell, have no idea what Mr. Levis and I might have said, if we had a meeting on such a date.

Q. Mr. Hatch is the gentleman in your company who worked in connection with the issuing of new licenses, did he not?

A. No, he didn't.

Q. I believe we have had some memorandum showing he went out to California and talked to the Midway Glass Company and I believe we have a memorandum he talked to other people at other places; isn't that true?

A. That may have been true, but he was in the patent department as a solicitor.

Q. Wasn't part of his job investigation of the qualifications of new licensees?

A. Why, he may have done some of that at odd times, yes.

Q. Among his various duties?

A. Yes.

Q. We will come to one of them later on; a very interesting duty. Don't you remember——

Mr. Haight: Is that a question or explanation?

[fol. 2588] Mr. Isseks: No, strike it out physically.

Q. Isn't it a fact Mr. Hatch in 1937 was looking into a prospective new licensee and took the matter up with you or one of your other associates?

A. Not that I remember.

Q. Well, there is a statement in that letter to the effect you have been given the entire picture by somebody. Do you have any recollection what that picture was?

Mr. Haight: There is a belief expressed, not a statement.

Mr. Isseks: I am sorry, the writer of the letter, Mr. Naylor, says: "I believe Mr. Goodwin Smith has been given the entire picture".

Q. Does that refresh your recollection as to what picture you were given by somebody connected with Owens-Illinois?

A. No.

Q. You have no recollection whatsoever?

A. No. I could make a wild guess.

Q. I will take it—anything.

A. That it may or may not have had something—I wouldn't have thought of it if I hadn't heard the correspondence this morning, and it may not be it at all—but it may have had something to do as to which one of our licensees, or how many, were contemplating putting up a plant in Texas.

Q. It may have had something to do with an application for a license by somebody else to put up a plant in Texas?

A. Well, I wouldn't even know that.

Q. Would Mr. Hatch have anything to do with one of [fol. 2589] your licensees contemplating putting up a new plant in Texas?

A. No, I don't think he would.

Q. But he did have something to do with investigating new licensees, as the evidence here shows, did he not?

A. Yes, to a very limited extent, as my memory goes.

Q. Well, the Court will have to decide that based on the evidence. But what is your recollection about what Hatch's duties were as to investigating new licensees?

A. Well, if Mr. Hatch was on the coast and we had an inquiry coming from the coast, unquestionably when he was out there he would investigate the situation, of course.

Q. You don't remember what this "picture" referred to here is about?

A. I haven't the least idea.

Q. No general recollection or detail?

A. Not a bit.

Mr. Isseks: Now, at this time I would like to offer in evidence two documents, first, Government's Exhibit 506, memorandum to Mr. Pease from C. H. Pearce, subject, "Mantle Lamp Company of America. Copy to Mr. Eldred." Dated September 18, 1937.

Q. Who was Mr. Pearce, Mr. Smith?

A. Pearce was Mr. Pease's assistant.

Q. He had something to do with licensing, did he not?

A. Well, he has been primarily an engineer who helps Mr. Pease on the licensing end.

Q. I show you this document and ask you whether you can identify Mr. Pearce's initials on the end thereof?

[fol. 2590] A. No, I cannot.

Mr. Isseks: It has been stipulated as to genuineness by Hartford-Empire Company. I offer it in evidence.

The Court: It may be received, over objection.

Mr. Isseks: As 507 I offer in evidence a letter, stipulated as to genuineness, photostat of carbon, by Hartford, dated September 23, 1937, to Mr. V. S. Johnson, president, Mantle Lamp Company of America, Chicago, Ill., signed C. H. Pearce, Hartford-Empire Company. There is a handwriting on the side of the first page of 506.

Q. Do you recognize that handwriting?

A. I think probably that is Mr. Pease's, I am not sure.

Mr. Williams: What is it?

The Witness: It looks like Mr. Pease's handwriting but I am not dead-sure.

Mr. Isseks: The words I refer to are: "No Rulic. committee 9-23-27", which is the date of the letter.

Has Your Honor admitted Exhibit 507?

The Court: Exhibit 507 may be admitted, over objection.

Mr. Isseks: I would like to have both read.

(Government's Exhibit 506 read by Mr. McCracken.)

Mr. Wall: I would like to check that date of "1905".

Mr. Isseks: It may be a mistake. I will stipulate it [fol. 2591] should be "25" if you want to. I think it is immaterial.

(Government's Exhibit 507 read by Mr. McCracken.)

Q. Mr. Smith, do you know whether or not your company has ever issued a license to the Mantle Lamp Company of America, of Chicago, Illinois?

A. We never did.

Mr. Isseks: At this time I would like to offer in evidence, three documents, the first, Government's Exhibit 508, is dated August 20, 1937, addressed to a Mr. Wheeler, president, Sandy Valley Grocery Company, Ashland, Kentucky, signed Hartford-Empire Company, by Mr. Pease, assistant treasurer, stipulated as to genuineness by Hartford.

The next one, Government's Exhibit 509, is dated August 25, 1937, on the stationery of Glass Container Association of America, addressed to Mr. Pease, signed E. G. Ackerman, stipulated as to genuineness by Hartford.

The next, Your Honor, is Government Exhibit 510, dated August 26, 1937, addressed again to Mr. Wheeler, apparently signed by Mr. Ackerman, initials in the lower left-hand corner "E. G. A.", photostatic copy of apparently a carbon stipulated by Hartford as coming from its files.

I offer the three documents in evidence.

Mr. Day: I want to make a general objection as not competent, relevant, and immaterial. I raise no question at any time as to authenticity on behalf of the clients I represent.

The Court: Very well, it may be admitted, over objec-
[fols. 2592-2594] tion.

Mr. Middleton: Same objection on behalf of Owens.

The Court: Very well.

(Government's Exhibit 508, 509 and 510 read by Mr. Lewis.)

Q. Mr. Smith, did your company ever issue a license to the Sandy Valley Grocery Company?

A. We did not.

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[fol. 2595] Q. Mr. Smith, you heard those documents read, did you not?

A. I did.

Q. At that time, in 1936, it was still your policy, was it not, not to issue any licenses to newcomers in the industry?

A. Well, we took each situation up as it came, on the theory that we didn't want to decline until we had reviewed the whole story.

Q. Now, Mr. Smith, did you ever issue a license to a newcomer in the industry?

A. Well, we offered a license to a newcomer in the industry.

Q. Who was that?

A. There was a concern down in Dallas. I think Shemwell.

Q. How do you spell it?

A. S-h-e-m-w-e-l-l, I think.

Q. When was that, do you remember?

A. That was along in '37 or '38.

Q. Have you got any correspondence in connection with it?

A. I think there must be, but I am not sure.

Mr. Isseks: We haven't got it. I would appreciate it if counsel for Hartford would furnish us with any correspondence in connection with it.

[fol. 2596] Q. Anybody else but the one you have remembered since you were here the last time?

A. Not in the container field. We issued a license to Pittsburgh Corning to make brick, glass brick.

Q. But no one else in the container field other than the one you have mentioned?

A. I don't remember any, Mr. Isseks.

Q. Do you remember having some correspondence in 1938 and '39 with one Ward Hubbard, in regard to a license for the container field?

A. That wasn't Kerr Hubbard, was it?

Q. No sir, that is another Hubbard. Mr. Ward Hubbard of the Wabash Fiber Box Company, Terre Haute, Indiana.

A. Yes, I think he did write us.

Q. Did you ever see Mr. Ward Hubbard? Your counsel has suggested I ask you about the Intermountain Company, you may have had some correspondence with.

A. Well, I know that we had correspondence with them and I don't recollect, we may have offered them a license and they may have declined to take it. I think that is true.

Q. Did you have any correspondence with them?

A. I think there must have been, Mr. Isseks.

Mr. Isseks: I would like counsel to produce it if they can.

Q. Did you have any personal conferences with those gentlemen?

A. No, I think not.

Q. What year was that?

A. Oh, '36, '37,— around there, possibly '38.

[fol. 2597] Q. Now, did you ever meet Mr. Ward Hubbard in connection with his application for a license?

A. I don't think I did, but if I remember correctly Mr. Hubbard, years previously, had been with the Turner Glass Company. I remember he wrote me about a license, which was not granted.

Mr. Isseks: At this time I would like to offer in evidence a series of letters between Mr. Ward Hubbard and the witness, photostatic copies of which have been furnished us by Hartford within the last 24 hours. First, Government's Exhibit 511 is a letter on the stationery of Wabash Fiber Box Company, Terre Haute, Indiana, addressed to the witness, signed W. S. Hubbard, executive vice-president, dated October 28, 1938.

The next 512, is a carbon copy of a letter dated October 31, 1938, addressed to Mr. Hubbard, signed by the witness, which copies to Messrs. Eldred and Pease.

Next, Government's Exhibit 513, is dated November 29, 1938, to the witness from Mr. Hubbard.

The next 514, dated December 21, 1938, to Mr. Hubbard from the witness.

The next, Government's Exhibit 515, is dated December 28, 1938, to the witness, from Mr. Hubbard.

The next, 516, is January 9, 1939, to Mr. Hubbard from the witness.

517 if January 13, 1939, from Mr. Hubbard to the witness.

The Court: They may be admitted, over objection.

[fols. 2598-2599] (Government's Exhibit 511, letter of October 28, 1938, read by Mr. Lewis.)

Q. You received that letter, did you not, Government's Exhibit 511?

A. I did.

(Government's Exhibit 512 read by Mr. Lewis.)

Q. You wrote that letter, Government's Exhibit 512?

A. Oh, I think so. I assume if my signature is there I did.

Q. The initials are there, "F. G. S."

Mr. Haight. It came from our files.

A. I did.

(Government's Exhibit 513 read by Mr. Lewis.)

Q. You heard that read, did you not?

A. I did.

Q. And you received that, did you not?

A. I think I did.

Q. There is a word in handwriting on here, I believe it says "Sterling". Do you recognize whose handwriting that is?

A. No, I don't know.

(Government's Exhibit 514 read by Mr. Lewis.)

Q. You wrote that letter too, did you not, Government's Exhibit 514?

A. Yes, if it came from our files.

Mr. Haight: Before the next one is read, I would like to interpose an objection. The letter deals with the testimony before the National Economic Committee, and goes into some of the writer's ideas.

Mr. Isseks: I will strike out the first paragraph.

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[fol. 2600] The Court: Well, it may be received, with the conditions that have been agreed upon by Mr. Isseks, that it is not received for the purpose of establishing the truth of any of the statements there, but as a connecting link between the letters written by the witness, to show his state of mind. The first paragraph may go out. All right; proceed.

(Government's Exhibit 515 read, commencing with second paragraph, and the remainder thereof, by Mr. Lewis.)

Q. You received that letter, did you not, Mr. Smith?
A. I did.
Q. You were familiar, were you not, with the fact that the Turner Glass Company plant had closed down?
A. Oh, yes.
Q. And you knew also that the North Baltimore Company plant was not in operation?
A. That was so brought out yesterday.
Q. Of course the Owens plant, to which reference is made there, is the old Root Glass Company plant, is it not?
A. I think so.
Q. And Owens bought it out before the date of this letter?
A. That I don't remember.

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[fol. 2601] Q. You are familiar with what transpired in the Glass Container Industry from 1916 to date?
A. Not entirely.
Q. I mean generally?
A. Generally, I think so.
Q. Most of these companies were your licensees, were they not?
A. Yes.
Q. Did you know that the Owens Company acquired the Root Company, which was located in Terre Haute, Indiana, at some time prior to the date of this letter, which is De- [fol. 2602] cember 28, 1938?
A. I don't remember the date, Mr. Isseks.
Q. Forget the date. Did you know that the Owens Company acquired the Root Company?
A. I have been so told.

Mr. Middleton: I submit, Your Honor, I wish not to be technical, Your Honor can see that is a question which can be construed in several ways. That is not the fact. It is conceded Owens bought the assets of Root Company, which is an entirely different thing from what this question indicates. That is all conceded, they did buy the assets of the Root Company.

Mr. Isseks: I will put the question.

Mr. Middleton: The assets were bought.

Q. Did you know that some time prior to December, 1938, in some manner Owens acquired the assets and properties of the Root Company?

A. I have just heard what they did.

Q. Did you know it at the time, December, 1938?

A. Well, what date did they acquire the assets?

Q. I don't know.

A. Well, I don't either.

Q. I show you a letter you wrote, the very next letter, Government's Exhibit 516, and see if that does not refresh your recollection that prior to that time the Owens people had acquired the Root Glass Company plant at Terre Haute, Indiana.

A. (After examining letter.) Well, it was general in- [fol. 2603] formation, Mr. Isseks,—

Q. Of course it was.

A. —that the Owens Company had made a deal with the Root Company, of course.

Q. And it took place prior to the date on which you wrote that letter which is in front of you, and which is dated January 9, 1939?

A. Oh, I think so.

Q. You knew sometime after the thing you call a "deal" which is a little more colloquial than "acquisition of assets", that Owens Glass Company had obtained that plant at Terre Haute, as you said in your letter?

A. Well, I think that is probably true.

Mr. Isseks: That is right. That is what I am trying to find out. I would like to have Government's Exhibit 516 read.

(Read by Mr. Kramer.)

Q. You wrote that letter, Government's Exhibit 516?

A. I did.

(Government's Exhibit 517 read by Mr. Kramer.)

Mr. Middleton: May the record show the objection by Owens specifically to this group, 511 to 517, and our motion to strike from the record, for the reason they are dated subsequent to 1935.

The Court: Very well.

Q. You heard this Government's Exhibit 517 read?

A. That is right.

Q. You received that, did you not?

A. I think so.

[fol. 2604] Q. Did you ever reply to it? We have no copy of a reply.

A. I don't think I did. I think I let the matter drop.

Q. You never issued a license to the people whom Mr. Hubbard said he represented?

A. No, we did not.

Q. Do you know who Mr. Hubbard represented?

A. I haven't any idea. He wouldn't tell us.

Q. Did you ever find out?

A. No.

Q. Don't know to this day?

A. No.

Q. Did you ever know it was the Schenley people that were interested in putting up a plant at Terre Haute?

A. No, I don't. We always had a suspicion that probably somebody in the liquor business.

Mr. Isseks: At this time I would like to have marked, a document dated May 20, 1933, addressed to Mr. John D. Warfield, Sterling Glass Company, Chicago, Illinois, and signed by Mr. Pease, on behalf of Hartford-Empire Company. This photostat was furnished us yesterday by counsel for Hartford.

(Marked Government's Exhibit 518.)

[fol. 2605] Mr. Isseks: Government's Exhibit 519, letter dated June 5, 1933, addressed to Mr. Warfield and signed by Mr. Pease.

I offer both documents in evidence. Both of these were furnished me yesterday by counsel for Hartford.

The Court: They may be admitted, over objection.

Thereupon, Government's Exhibits 518 and 519 were read to the Court by Mr. Kramer, of counsel for the government.

Q. Now, Mr. Smith, you have heard these letters read, did you not?

A. I did.

Q. Referring to Government's Exhibit 518, Mr. Pease states the third full paragraph, the first sentence, "The reason for omitting catsup is as you no doubt remember, that our policy is not to grant rights for articles for which a company is not already established". Was that your company policy?

A. Well, it was in a great many cases. There were exceptions to the rule. We made an exception here. But when people came to us and asked for licenses we generally gave them broad enough licenses for their particular business and the general glass business. Some made a specialty of pressure ware, others milk bottles, others fruit jars, and so on down the line. Now apparently they convinced us they needed those extra rights to round out their business.

Q. But generally your policy was not to grant rights for [fol. 2606] articles for which a company was not already established?

A. Then we changed a good deal, Mr. Isseks. I think probably when the licensees first came to us that was our attitude, but as time went on we made a good many additions to their fields of ware.

Q. Are you through, sir?

A. Yes.

Q. The Sterling Company is connected with what other company, if you know?

A. I don't know. There is a Mr. Warfield in Chicago supposed to own the largest interest in the Sterling Glass Company.

Q. Is it affiliated with any other company?

A. Not that I know of, Mr. Isseks.

Mr. Isseks: At this time, Your Honor, I would like to offer in evidence a series of documents relating to the Sterling Glass Division. The first is Government's Exhibit 520, dated July 14, 1938, to Hartford-Empire, attention Mr. Pearce, signed by William H. Avery, Vice-President.

Reply is marked Government's Exhibit 521, dated July 19, 1938, to W. H. Avery, Vice-President, Sterling Glass Division, signed C. A. Pearce to Hartford-Empire Company.

The next one is February 14th, 1940, Exhibit 522, addressed to the Hartford-Empire Company, signed Sterling Glass Division, the Warfield Company, William H. Avery, Vice-President.

[fol. 2607] The next one, Government's Exhibit 523, to William H. Avery, dated February 16, 1940, signed A. M. Pease, Assistant Treasurer. Photostat shows copies went to Messrs. Brown, Eldred, Stafford and Smith.

Next one, Government's Exhibit 524, is dated February 21st, 1940, addressed to Empire Company, attention Mr. Pearce, signed by Sterling Division, Warfield Company, William H. Avery, Vice-President.

Next one is Government's Exhibit 525, dated February 26th, 1940, to Mr. Avery, signed by Mr. Pease, Assistant Treasurer, and copies that have been furnished us show that copies were sent to Messrs. Brown, Eldred, and Smith.

Government's Exhibits 520 to 525, inclusive, were furnished us yesterday by Hartford-Empire Company. I offer them all in evidence.

The Court: They may be admitted, over objection.

Mr. Middleton: And subject to Owens' special objection?

The Court: Very well.

(Government's Exhibits 521, 522, 523, 524, and 525 were read by Mr. Lewis.)

Mr. Isseks: Your Honor, at this time I would like to offer in evidence photostatic copy of an original letter as Government's Exhibit 526. The letter is on the stationery of Fairmont Glass Works, Inc., Indianapolis, Indiana, dated April 5, 1937, addressed to Hartford-Empire Company, signed Fairmont Glass Works, by Charles D. Rau.

[fol. 2608] I would like to offer in evidence as Government's Exhibit 527 the reply dated April 10, 1937, to Mr. Rau, from A. M. Pease, Assistant Treasurer.

Both of these documents, Your Honor, were furnished us yesterday by counsel for Hartford.

Mr. Middleton: Special objection on behalf of Owens by reason of the dates.

The Court: That may be had. They will be admitted, over objection.

Thereupon, Government's Exhibits 526 and 527 were read to the Court by Mr. McCracken, of counsel for the government.

Q. Mr. Smith, you testified to at least one that you remembered in Texas, and possibly another one in the far west of the people that applied for license and that you offered licenses to, and I think you indicated they did not accept them?

A. That is correct.

Q. As far as you can remember—I want to go over something we went over yesterday—is there any licensee of yours now that became a licensee with new capital in the industry, a total newcomer?

A. I think that is probably correct, Mr. Isseks.

Q. There isn't any?

A. Oh, I would have to check it.

Q. You say that is correct. You mean there isn't any?

A. Well, I think probably with very few exceptions. There may be some exceptions, but I think generally our licensees as a whole consist of manufacturers who were in the industry.

[fol. 2609] Q. You say with very few exceptions. Do you know of any exceptions now?

A. No. I can't think of any right now.

Q. If you can find any exceptions I would appreciate it if you would tell us?

A. All right.

Q. Do you know any applicants for licensees other than these that were discussed here that were made and were turned down?

A. No. I could not remember, Mr. Isseks.

Q. You do remember though that there were two manufacturers of glassware, namely, Reed and Kerr, that you made an offer to them to have them become licensees?

A. That is correct.

Q. What is your recollection of the early efforts made to have Reed become a licensee?

A. Well, I think that goes back to a number of years. Just how many I could not tell you, but I would say that we have had a number of conferences with representatives of the Reed Company, and we thought we were about to get somewhere, then something else came up and we never were able to persuade them to take a license.

Q. I think I am going back to the question, licensee of newcomers. I have a list of every licensee.

Mr. Haight: What do you mean by newcomers?

Mr. Isseks: New capital.

Mr. Haight: You mean people who were not manufacturers of glass when the Hartford-Empire came on the field?

[fol. 2610] Mr. Isseks: No, sir, not manufacturers of glass when the application was made. I think that work "newcomer" was used in some of the correspondence.

Mr. Goodrich: I think there are quite a number of new organizations financed with new capital that took over old glass works. I wanted to know where such an organization stands within your definition.

Mr. Isseks: I will call it a newcomer. Ask Mr. Smith. Mr. Smith knows more about the glass industry than anybody in this room. I will stipulate that.

A. Well, I won't.

Q. Well, I will. We will take American Thermos Bottle Company. They became a licensee the first time in 1923. They were an old existing company when you gave them a license?

A. Yes.

Q. And Akro Agate Company, they became a licensee in 1929. They were in the business prior?

A. Yes.

Q. Of course we know Ball Brothers was?

A. Yes.

Q. And Bartlett Collins Company were in business when they became a licensee in 1932?

A. Correct.

Q. And Beaumont Glass Company?

A. Correct.

Q. Beaumont Glass Company became a licensee in 1939. Were they in business, a very small company?

[fol. 2611] A. I think they had a Lehr License.

Q. That is right, but they were in business?

A. Yes.

Q. Brockway Machine was in business before they became a licensee in 1933?

A. Correct.

Q. Buck Glass Company was in business before they became a licensee in 1926?

A. Yes.

Q. Capstan Glass Company was in business before they became a licensee in 1926?

A. Yes.

Q. Chattanooga B. & G. Manufacturing Company was in business before they became a licensee in 1923?

A. Correct.

Q. Consolidated Glass Company, they were in business before they become a licensee?

A. Yes.

Q. Of course we know about Corning. They were in business?

A. Yes.

Q. And Demuth Glass Works were in business before they became a licensee in 1939?

A. I think that is only a Lehr License.

Q. Diamond Glass Company became a licensee in 1933. Were they in business before?

A. They had been, and I think they closed their plant down and rehabilitated themselves.

Q. They were like Wormser, who did not get a license?

[fol. 2612] A. I think so but I am not sure.

Q. I think I will stipulate that if you want to. The Fairmount Glass Works, Rau's company, they were in business before they became a licensee?

A. Yes.

Q. And of course Federal Glass Company was?

A. Yes.

Q. The Fenton Art Glass Company is only a Lehr License?

A. Yes.

Q. The Florida Glass Manufacturing Company was in business before they become a licensee?

A. That is right.

Q. Foster Forbes Glass Company were in business before 1925?

A. It was a company under another name.

Q. But they were in business before they became a licensee?

A. Yes.

Mr. Goodrich: Was that a refinancing, Foster and Forbes Glass Company?

Mr. Isseks: My associates say no.

Mr. Goodrich: Let's check that one. That may come within your definition of new capital.

Q. Gayner Glass Works were in business before they became a licensee in 1924?

A. They were in business.

Q. I will give you the next one, Gill Glass & Fixture Company?

A. Yes, that was a Lehr License.

Q. Gleason-Tiebout Company, they were in business before they became a licensee?

[fol. 2613] A. Yes.

Q. Gillinder Brothers?

A. Yes.

Q. Glenshaw Glass Company, they were in business before they became a licensee?

A. Yes.

Q. Glass Containers, Inc.?

A. Yes. That was a new corporation refinanced. I think it used to be Long Beach.

Q. All right, in 1929 they got a license?

A. Yes.

Q. Had they been doing business before in a different name?

A. Yes. I think there was some refinancing there.

Q. But it was not complete new capital, new company; I will use the word new company?

A. Well, I don't know just where that would fall.

Q. Hart Glass Company, of course, was in business before?

A. Yes.

Q. J. T. & A. Hamilton Company?

A. Yes.

Q. Hazel Atlas was, of course?

A. Yes.

Q. And H. J. Heinz Company, your only food manufacturer, they were in business before they had a license?

A. Yes.

Q. Of course Anchor-Hocking Glass Corporation was?

A. Yes.

Q. Inland Glass Company, is that just a Lehr?

A. No. I think they had a feeder.

[fol. 2614] Q. They were in business before?

A. Yes.

Q. So was the Indiana Glass Company?

A. Yes.

Q. So was Kimble Glass Company?

A. Yes.

Q. So was Knox Glass Bottle Company?

A. Yes.

Q. So was Lamb Glass Company?

A. Yes.

Q. So was Lancaster Lens?

A. Yes.

Q. So was Latchford Glass Company?

A. Yes.

Q. So was Laurens Glass Works?

A. Yes.

Q. So was Liberty Glass Company?

A. Yes.

Q. So was Macbeth Evans Glass?

A. Yes.

Q. So was Maryland Glass Corporation?

A. Yes.

Q. So was Maywood Glass Company?

A. Yes.

Q. And McKee Glass Company?

A. Yes.

Q. Northwestern Glass Company?

A. I don't remember whether that plant had been abandoned [fol. 2615] and some new capital came along and rehabilitated the company. I think probably that was it, but I am not sure.

Q. It had been in business before?

A. There was an old plant there. I think the business failed and then some new capital came along and they started up again.

Q. The Olean Glass Company had been in business before?

A. Yes.

Q. And Owens-Illinois Glass Company, of course?

A. Yes.

Q. Paden City Glass Company?

A. That is a Lehr.

Q. Just a Lehr?

A. Yes.

Q. Pierce Glass Company?

A. Yes.

Q. Phoenix Glass Company?

A. Yes.

Q. Salem Glass Works?

A. Yes.

Q. Seneca Glass Company?

A. Just a Lehr.

Q. L. E. Smith Company?

A. Just a Lehr.

Q. The Sterling Glass Company, of course, had been in business?

A. Yes.

Q. Swindell Brothers had been in business?

[fol. 2616] A. Yes.

Q. And Thatcher Manufacturing Company of course?

A. Yes.

Q. And Tygart Valley Glass Company?

A. Yes.

Q. And Universal Glass Company?

A. Yes.

Q. And Whitall Tatum Company?

A. Yes.

Q. And T. C. Wheaton Company?

A. Yes.

Q. The Whitall Tatum had been taken over by the Armstrong group later on?

A. Yes.

Q. In other words, new capital came along and bought out Whitall Tatum?

A. That is correct.

Q. Do you remember that Swindell applied for a license years ago long before it became a licensee in 1927?

A. That may be true, Mr. Isseks. I don't happen to remember.

Q. Do you remember talking to Mr. Swindell about it?

A. No. I just don't remember how long we talked about it before they actually took the license.

Q. I will go back to Reed now. At this time I would like to offer in evidence a memorandum made by the witness on September 26th, 1934, entitled "Latest Reed Bulletin" on stationery of Hartford-Empire Company. This, Your [fols. 2617-2620] Honor, I believe has been—I will ask the witness whether these initials on the photostat are your initials?

A. They are my initials but I did not write them.

Q. You did not write them?

A. No.

Q. Do you remember writing that memorandum which is set forth there?

Mr. Isseks: Your Honor, I am told it has been stipulated as coming from the files of the Hartford-Empire Company.

A. Well, I can't deny I wrote that, although no doubt that is not my signature.

Mr. Middleton: I can't hear the answer.

A. I probably wrote this although I did not sign it. F. G. S. is not my signature. Whether this represents something I told somebody or not, I don't know, but I think probably the information contained here was probably true.

Q. You notice it is on the stationery of the Hartford-Empire Company from the office of the president?

A. Yes.

Q. You don't question that you wrote it?

A. No. I don't question that I did, Mr. Isseks.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, over objection.

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[fol. 2621] The Court: I will overrule the objection. It may be received.

Thereupon Government's Exhibit 528 was read to the Court by Mr. McCracken, of counsel for the government.

The Court: You may suspend at this time. The bailiff may recess court twenty minutes.

(Recess 20 minutes.)

[fol. 2622] (3:35 p. m.)

Mr. Isseks: Your Honor, at this time I would like to offer as Exhibit 529, a letter on the stationery of the Lynch Corporation, dated July 7, 1936, addressed to Hartford, signed "Lynch Corporation by T. C. Werbe, president". It is stipulated as to genuineness by Hartford.

Next I would like to offer, as Government's Exhibit 530, reply dated July 10, 1936, to Mr. Werbe, signed Hartford-Empire Company, R. D. Brown.

Then I would like to offer as the next exhibit, Government's Exhibit 531, copy of letter dated July 22, 1936, to Hartford-Empire Company, signed Lynch Corporation, by Mr. Werbe.

As the next exhibit, 532, a letter dated July 22, 1936, to F. E. Reed Glass Company, signed Lynch Corporation by T. C. Werbe.

The first three were stipulated as to genuineness by Hartford, the fourth stipulated by Hartford as coming from its files. I offer the four documents in evidence.

Mr. Middleton: Special objection by Owens, by reason of the dates.

Mr. Haight: I don't think I interposed in the last objection, or conditioned it upon the fact I would not have to interpose the same objection to the same kind of testimony. If that is understood, I will not repeat the objection.

The Court: Very well. They will be admitted, over objection.

[fol. 2623] (Government's Exhibits 529, 530, 531 and 532 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to offer in evidence Government's Exhibit 533 a letter dated July 29, 1936, to Arthur F. Reed, president, F. E. Reed Glass Company, signed by the witness, notation on the carbon copy, as to which Hartford has stipulated regarding the genuineness, that copies went to Messrs. Safford, Brown, Belknap and the Lynch Corporation. I offer it in evidence.

The Court: It may be admitted over objection.

Mr. Middleton: Same objection on behalf of Owens.

(Government's Exhibit 533 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to offer in evidence as Government's Exhibit 534, photostatic copy of an original letter dated August 1, 1936, to Hartford-Empire Company, attention Mr. Smith, signed F. E. Reed Glass Company, by A. F. Reed, stipulated as to genuineness by Hartford.

The Court: It may be admitted, over objection.

Q. You heard Government's Exhibit 533 read, purporting to be from you to Mr. Reed. You wrote that letter, did you not?

A. I did.

(Government's Exhibit 534 read by Mr. Kramer.)

Mr. Haight: I presume that is offered and accepted under the usual stipulation, and would call attention that the statement, "nobody else has a forming-machine license" is manifestly incorrect.

The Court: That is correct.

Mr. Middleton: May it be understood my standard objection goes to this and all other correspondence offered because of being of later date, so I will not bother the Court?

The Court: That may be understood.

Mr. Fess: The defendant, the Lynch Corporation and [fol. 2624] associated defendants would make the same objection.

Mr. Haight: Your Honor nodded his head, but I don't think the stenographer caught it. I think that is to be understood.

The Court: That is correct.

Mr. Middleton: May it be understood my standard objection goes to this and all other correspondence offered because of being of later date, so I will not bother the Court?

The Court: That may be understood.

Q. You heard the letter read, did you not?
A. I did.
Q. You received it, did you not?
A. I did.

Mr. Isseks: At this time I would like to offer in evidence as Government's Exhibit 535, the reply dated August 4, 1936, to Mr. Arthur F. Reed, signed, apparently, by the witness, as president of Hartford-Empire Company, stipulated as to genuineness by Hartford-Empire Company. There is a notation on the carbon copy a copy went to W. J. Belknap. It has a notation in the upper left-hand corner in typewriting, "R. D. Brown".

The Court: It is admitted, over objection.

(Government's Exhibit 535 read by Mr. Kramer.)

Q. You heard that read, did not you, Mr. Smith?
A. I did.
Q. You wrote the letter, did you not?
A. I think I did, Mr. Isseks.

[fol. 2625] Mr. Isseks: At this time I offer as Government's Exhibit 536, a letter dated August 17, 1936, to Hartford-Empire Company, attention Mr. F. Goodwin Smith, signed F. E. Reed Glass Company, A. F. Reed, stipulated as to genuineness by Hartford.

The Court: It may be admitted over objection.

(Government's Exhibit 536 read by Mr. McCracken.)

Q. You received that letter, did you not, Mr. Smith?

A. I did.

Mr. Isseks: Now, Your Honor, at this time I offer as Government's Exhibit 537, a letter dated August 19, 1936, to Mr. Arthur F. Reed from the witness, a photostat of the carbon copy. It has been stipulated as to genuineness by Hartford. It indicates that copies went to Messrs. Brown, Eldred, Pease and Safford.

The Court: It may be admitted, over objection.

(Government's Exhibit 537 read by Mr. Kramer.)

Q. You wrote that letter, did you not?

A. I did.

Mr. Isseks: Your Honor, at this time I offer in evidence, Government's Exhibit 538, a letter dated September 21, 1936, addressed to F. E. Reed, president, F. E. Reed Glass Company, signed Hartford-Empire Company by R. D. Brown, and attached to it is a letter of the same date between both parties, apparently by registered mail, carbon copy, photostats of which have been furnished to us, and as to which Hartford has stipulated as to genuineness, shows that the first letter, a copy of the first letter, went to Mr. Belknap, and copies of the second letter went to Mr. Bel- [fol. 2626] knap and Mr. Reed. I assume the Mr. Belknap referred to in the second letter is W. J. Belknap, who is referred to in the first one. I offer both letters as one exhibit.

The Court: They may be admitted, over objection.

(Government's Exhibit 538 read by Mr. McCracken.)

Mr. Haight: I don't think the Court is interested in reading this.

Mr. Isseks: We will not read the notice of the infringement. The notice is a formal notice.

The Court: Very well. You may dispense with reading it.

Q. Now, Mr. Smith, you know a gentleman by the name of Gwyer?

A. Yes.

Q. Does he have any connection with your company?

A. Not now; he did have.

Q. In 1937?

A. I don't know. I think it was '38.

Q. What was his connection with your company?

A. Well, we opened a small New York office and he was there in that office.

Q. Do you remember that some time in 1937 your company tried to work out an arrangement for having someone in the glass-container industry that was a licensee, make approaches to the Reed people in an effort to buy them out?

A. I don't remember that Mr. Issek. It might have been [fol. 2627] true but I don't recall it.

Mr. Isseks: Your Honor, at this time I offer in evidence as Government's Exhibit 539, a memorandum dated June 18, 1937, to Alexander D. Falck, Esq., from F. Goodwin Smith, copy to Mr. Amory Houghton, unsigned otherwise, stipulated as to genuineness by Corning Glass Works.

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The Court: It may be admitted, over objection.

[fol. 2628] (Government's Exhibit 539 read by Mr. Lewis.)

Q. You heard that read, did you not?

A. Yes.

Q. You wrote that, did you not?

A. I did.

Q. Did you arrange, through Mr. Gwyer, to have someone from Shields & Company talk to Mr. Reed?

A. No, I think that came the other way.

Q. I would like to know what you mean.

A. Well, I think Mr. Gwyer picked up that information, reported it to me and I reported it to Mr. Falck and Mr. Houghton.

Q. Didn't you arrange to have Mr. Gwyer make the suggestion to Mr. Gardner and the Mr. Moxham? In the first place, who is Mr. Moxham?

A. Well, he was a member of Shields & Company.

Q. In their New York office, was he not?

A. Yes, that is true.

Q. Didn't Mr. Gwyer, at your suggestion, arrange to have Mr. Moxham have Gardner make this contact?

A. Well, now, that might have been so.

Q. You read it.

A. May I read it again?

Q. You read it and see if it is not a fact you made the arrangement.

A. (After witness refers to exhibit.) Well, I don't remember asking Gwyer that, but this rather denotes I did ask him.

Q. Doesn't it refresh your recollection you did?

[fol. 2629] A. No.

Q. Isn't it a fact, also, you arranged to have Ball Bros. make an approach to the Reed Company in an effort to have Ball Bros. buy up the Reed Company?

A. I don't have any such recollection.

Mr. Isseks: At this time, Your Honor, I offer in evidence original of a letter dated June 21, 1937, apparently on note stationery, addressed, "Dear AM". I will ask the witness who it is,—signed "Goodwin". I will ask the witness who that is. Stipulated as to genuineness by Corning Glass Works.

Q. Mr. Smith, I ask you whether that is your signature on this document?

A. That is.

Q. The gentleman referred to as "Am" is who?

A. Mr. Amory Houghton.

Q. You wrote that letter, did you not?

A. I will have to read it. (After he reads it.) Yes, I wrote that, Mr. Isseks.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Sayles: I make the same objection.

The Court: It may be admitted, over objection.

(Said Government's Exhibit 540 read by Mr. Kramer.)

Q. Did you arrange to have the Ball people approach the Reed people in an effort to buy them out?

A. No, I didn't arrange it. As I remember that, Mr. Isseks, the Ball people asked me if the Reed Glass Company [fol. 2630] was for sale, and I told them I didn't know, but I would try to find out. It comes back to me now. And I wrote that memorandum to Mr. Armory Houghton, referring to Ball's possible interest in buying out the Reed Glass Company. That is about all I can tell you.

Q. You say in this letter to Mr. Houghton of June 21, 1937, in the second paragraph, "If the idea of some kind of a partnership with Corning takes root, it might be of some advantage to have the Rochester people feel others were really definitely interested." What kind of partnership" did you refer to?

A. I haven't the least idea.

Mr. Isseks: Your Honor, at this time I would like to have marked as the next exhibits a series of documents relating to the Kerr Glass Company. The first is dated October 16, 1933, addressed to C. H. Hubbard, president of Alexander Kerr & Company, signed Hartford-Empire Company by Mr. Eldred.

(Marked Government's Exhibit 541.)

542 is dated November 3, 1933, addressed to Mr. Hubbard, signed by R. F. H., apparently Mr. Hatch, for the Hartford-Empire Company. On the carbon we have are the initials in the lower left-hand corner, "RFH".

The next one, Government's Exhibit 543, dated February 14, 1934, to Mr. Hubbard, signed by Mr. Pease.

Next one, Government's Exhibit 544, dated October 31, 1934, to Mr. Hubbard, signed by Mr. Pease.

Next one, Government's Exhibit 545, is dated January [fol. 2631] 12, 1935, to Mr. Hubbard, signed by Mr. Pease.

The next one, 546, dated March 7, 1935, to Mr. Hubbard, signed by Mr. Pease.

The next one, Government's Exhibit 547, dated March 29, 1935, to Mr. Hubbard, signed by Mr. Pease.

The last one, Government's Exhibit 548, is dated June 11, 1935, to Mr. Hubbard, and signed by Mr. Pease.

The Court: Do you offer them?

Mr. Isseks: I offer these in evidence. Yesterday copies were furnished to us by Hartford-Empire Company.

The Court: They may be admitted, over objection.

(Thereupon Government's Exhibits 541, 542, 543, 544 and 545 were read by Mr. Kramer.)

[fol. 2632] Thereupon, Government's Exhibits 546, 547, and 548 were read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Smith, you have already testified that neither Kerr nor Reed have ever become licensees?

A. That is true.

Q. You said something before about a New York office. Did you maintain an office in New York City for any length of time?

A. Well, we did. I would think for around two years, or it must have been three years we stayed, and then we gave it up.

Q. Mr. Smith, do you remember in connection with your original April 9th, 1924, agreement with Owens there was a little side agreement under which your company agreed that it would at any time between the date of the contract and July 1st, 1936, give Ball Brothers a non-exclusive license to manufacture fruit jars on that equipment?

A. No. I have forgotten that, Mr. Isseks.

Mr. Isseks: At this time I would like to offer in evidence photostatic copies of documents stipulated as to genuineness by Owens-Illinois Glass Company, at page 6. It is marked "Copy Hartford-Empire Company, Hartford, Connecticut, April blank, 1924", addressed to Owens Bottle Company, signed Hartford-Empire Company, by F. G. Smith, Vice-President, marked Exhibit 549.

Q. Do you have any recollection about that; I will show you the document. I will show you a copy of the exhibit? [fol. 2633] A. Is my signature on it?

Mr. Isseks: There is no signature. It is just typed. That is the way we have it. It is on page 6 of the Stipulation. It was handed to me yesterday, and that is why we did not put it in the original document. I am perfectly willing to offer it subject to its authenticity. It may be it never was finally signed, but the copy that was furnished us has a typewritten signature, and there was a stipulation as to genuineness. With that understanding, I offer it in evidence.

Q. Do you remember that document, Mr. Smith?

A. No, I don't remember it.

Q. But you would not deny that you executed the original?

A. Well, no. Of course I can't deny that I did, but I have no remembrance of it, and I am rather doubtful in my own mind whether it was ever really signed, but if you show me a signed copy of course that would answer it.

Mr. Isseks: Perhaps Owens, Your Honor, could locate the original. It was furnished us as a copy of a genuine document. If there is no such document I would prefer not to offer it.

The Witness: I would doubt there is. The question might have come up, Mr. Isseks, and been discussed.

Mr. Isseks: The copy furnished us purports to be a copy of an executed copy. Your Honor will notice from the document that was furnished us it purports to be executed. Perhaps it never was.

The Court: Have you been able to discover the original?

[fol. 2634] Mr. Middleton: If Your Honor please, I find I do not have anything like that here, but I will try tonight.

The Court: Then it may be admitted, subject to proof of its authenticity.

Mr. Middleton: And its accuracy. I will search tonight, and know in the morning whether or not we have the original.

Mr. Isseks: If there is no such agreement, we would prefer to withdraw the document.

The Court: I don't know what is in the document. If you want to withhold action on it, I will rule on it in the morning.

Mr. Isseks: I will be glad to have you do so.

Q. At this time I would like to have offered as the next exhibit 550, photostatic copy of original letter on the letterhead of Dorsey & Cole, dated December 3rd, 1924, addressed to the witness, in re Hazel-Atlas, and signed R. D. Brown.

Mr. Haight: I want to look at that and see if it is a privileged communication or not.

Q. Mr. Smith, I show you Government's Exhibit 550 marked for identification, and ask you whether you can identify the signature thereon?

A. Colonel Brown.

Mr. Isseks: It is stipulated as genuine by Hartford-Empire Company. We offer it in evidence.

The Court: It may be admitted over objection.

Mr. Haight: I wonder if final ruling on that can be with- [fol. 2635] held. I haven't had a chance to read it. I know Mr. Dorsey—at least I assume he was at that time—acting as counsel.

Mr. Isseks: It is written by Colonel Brown.

Mr. Haight: Well, that is still more important.

Mr. Isseks: I am perfectly willing to defer it until tomorrow morning.

The Court: Very well.

Mr. Isseks: At this time I would like to have marked Government's Exhibit 551, photostatic copy of original letter; stipulated as to genuineness by Owens-Illinois, page 9 of the Stipulation, on the letterhead of the Hartford-Empire Company, dated March 24, 1925, addressed to H. W. Carter, Owens Bottle Company, Toledo, Ohio, Hartford-Empire Company, Patent Department, by R. D. Brown.

Q. Mr. Smith, I show you Government's Exhibit 551 for identification, and ask you whether you can recognize the signature thereon?

A. Yes. I think that is R. D. Brown.

Q. Do you recognize the handwriting on the left hand side?

Mr. Haight: I have hardly read it. (Exhibit 550.) I don't think it is privileged.

Mr. Isseks: Counsel refers to Exhibit 550 and withdraws the objection.

The Court: It may be admitted then, over objection.

Mr. Isseks: And I offer 551.

The Court: 551 may be admitted, over objection.

[fol. 2636] Mr. Middleton: I don't have a copy of it.

The Court: You are referring to 551 you don't have a copy of?

Mr. Middleton: Yes.

Mr. Isseks: We will wait until tomorrow morning.

The Court: Then decision is deferred on 549 and 551. Exhibit 550 is admitted.

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[fol. 2637] Mr. Middleton: I only want to clear the record with respect to 549. I was to search for an original copy of the instrument referred to, which purported to have been a short agreement on the part of Hartford, and we found the original letter, and it is a letter agreement, it is exactly like the copy that was presented yesterday.

Mr. Isseks: I don't want to take this original from Owens, or Mr. Middleton, but I would like to show it to the witness and ask him whether the handwriting on the original is his signature.

The Witness: Yes.

Mr. Isseks: I now offer Government's Exhibit 549.

The Court: It will be admitted, over objection.

Mr. Isseks: I would like to have it read, please.

(Government's Exhibit 549 read by Mr. Kramer.)

[fol. 2638] Mr. Isseks: The date on the original is April blank, too.

Mr. Middleton: Yes, there is no date on the original.

Mr. Isseks: Your Honor, yesterday we had marked as Government's Exhibit 551, a photostatic copy of a letter dated March 24, 1925, to Mr. Carter from Mr. Brown. The ruling was deferred at the request of counsel. I would now like to mark the reply, photostatic copy of which has been marked Government's Exhibit 552, dated March 31, 1925, addressed to Hartford-Empire, attention Mr. Brown, and signed Henry W. Carter, stipulated as to genuineness by Owens-Illinois at page 9 of the stipulation. I offer both exhibits, 551 and 552 at this time.

The Court: They may be admitted, over objection.

(Government's Exhibits 551 and 552 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to offer in evidence as Government's Exhibit 553, a letter dated April 13, 1926, to Mr. Brown from Mr. Carter, stipulated as to genuineness by Owens-Illinois Glass Company, page 11 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 553 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I would like to offer as Government's Exhibit 554, a letter dated March 8, 1928, [fol. 2639] to Mr. R. F. Hatch, Hartford-Empire Company, signed Henry W. Carter, treasurer, stipulated as to genuineness by Owens-Illinois at page 13 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 554 read by Mr. McCracken.)

Mr. Isseks: At this time, Your Honor, I would like to offer in evidence as Government's Exhibit 555, a letter on the stationery of Owens Bottle Company, dated November 28, 1928, addressed to the witness, re "O'Neill Suction Machine", signed Henry W. Carter, treasurer, stipulated as to genuineness by Hartford-Empire at page 16 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 555 read by Mr. Kramer.)

Q. You heard that read, Mr. Smith?

A. I did.

Q. Did you receive that letter, sir?

A. I did.

Q. I show you the photostat of the original, and ask you whether you recognize the signature of Mr. Carter.

A. I do.

Q. Up in the upper left-hand corner are the words, "KEP return to FGS"; do you recognize that handwriting?

A. No, I don't, Mr. Isseks.

Q. Does this help you any, on the larger copy?

A. No.

Q. What about the handwriting "Copies made for KEP, RFH"?

[fol. 2640] A. It is not mine.

Q. Do you recognize it?

A. No, I don't.

Q. What about the notation in handwriting: "Wired Carter Nov. 30 how to reach our man. R.F.H."?

A. I think that is probably Mr. Hatch's, but I am not sure.

Mr. Isseks: I now offer in evidence letter dated November 30, 1928, addressed to Mr. Carter, subject "O'Neill Suction Machine" and signed, apparently, by Mr. Hatch on behalf of Hartford, and stipulated as to genuineness by Owens-Illinois Glass Company at page 14 of the stipulation. It purports to be in reply to the previous exhibit, Government's Exhibit 555, and this document has been marked Government's Exhibit 556.

The Court: It may be admitted, over objection.

(Government's Exhibit 556 read by Mr. McCracken.)

Mr. Isseks: Your Honor, at this time I offer in evidence as Government's Exhibit 557, a memorandum consisting of six pages, headed at the top, "O'Neill Suction Machine, Knox Glass Company, Knox, Pennsylvania", and the first few words read, "On Wednesday morning, December 18, 1928", otherwise it is undated; signed at the end, "Soubier" and stipulated as to genuineness by Owens-Illinois Glass Company at page 14 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 557 read by Mr. Kramer.)

Q. You heard that report read, did you not?

A. I did.

[fol. 2641] Q. Did you see it shortly after it was written?

A. I did not.

Q. Sure about that?

A. It is all news to me.

Q. First time you ever heard about this report?

A. Yes.

Q. You say that unequivocally?

A. Yes.

Q. Never heard about it before?

A. Now, wait a minute. I have never seen that report, copy, as far as I know was never sent to Hartford, and it is just as new to me as it is being read now as it was to the rest of the people.

Q. I don't take that as a statement. You mean to say it was news to everybody in this room?

A. Of course, the Owens, it is an Owens report, they must have known about it.

Q. Let's find out if you didn't know about it. On November 28, 1928, Mr. Carter wrote you about sending somebody down to the O'Neill plant?

A. That is correct.

Q. And you turned it over to Mr. Hatch?

A. That is correct.

Q. You are telling the Court you never heard about it until today?

A. I am telling the Court and you I have no remembrance at all of ever having seen that before.

Q. Or having heard about it?

[fol. 2642] A. No, I have no remembrance of having heard about it.

Q. Did you ever hear that Soubier and this trick man who calls himself Murphy, went down to the Knox-O'Neill plant and nearly went through the roof?

A. No, I never had.

Q. All right, let it that way.

Mr. Haight: What does that mean?

Mr. Isseks: The words "let it that way"? Sure. Strike it out.

Mr. Isseks: Now, at this time I would like to offer Government's Exhibit 558, photostat of carbon copy of letter dated December 31, 1928, addressed to the witness, signed by Mr. Carter, stipulated as to genuineness by Owens-Illinois at page 14 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 558 read by Mr. Lewis.)

Q. You heard that read, Mr. Smith?

A. I did.

Q. You received that, did you not?

A. I think I did, Mr. Isseks.

Q. You notice there is a reference here to another kind of report by Mr. Murphy in connection with Ball?

A. It so states.

Q. Did you ever see any report Mr. Murphy made on anything?

A. No, I don't think I did, Mr. Isseks, because those matters of investigation were handled by our Patent Department.

Q. Did you ever hear about the report that Mr. Murphy made on anything?

[fol. 2643] A. No, I don't think I would. I think I would probably be advised as to whether an investigator found that machines infringed or whether they didn't infringe, but as far as having anything to do with what was to be investigated, how they would investigate or get the reports when the investigators returned, that was handled by the Patent Department.

Q. Now, I direct your attention to the fact that in this letter Mr. Carter wrote to you on December 31, 1928,—which is apparently 12 days after Murphy made the trip where he tried to open the roof,—the letter states to you, "My dear Goodwin"—I am not saying it refers to the same subject-matter, as a matter of fact I say it refers to a different subject-matter—"Following up your telephone call of this afternoon in answer to my wire of the morning, I find you correct in stating Mr. Soubier hadn't been furnished with a copy of Mr. Murphy's report on Ball dated August 22." Does that refresh your recollection that you had seen reports made by Mr. Murphy?

A. No.

Q. Does it refresh your recollection you heard of reports made by Mr. Murphy?

A. No, I can only tell you what I have told you before; that the Patent Department would probably report to me their conclusions as to whether the machines infringed or did not infringe, and based on such reports would be the question whether suit was to be brought or not.

* * * * * * * *

[fol. 2644] Mr. Isseks: At this time I offer in evidence as Government's Exhibit 559, a letter dated April 18, 1929, addressed to the witness, signed by Henry Carter, stipulated as to genuineness at page 15 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 559 read by Mr. Lewis.)

Q. Mr. Smith, you heard that exhibit read, did you not, Exhibit 559?

A. I did.

Q. You received that letter, did you not?

A. I think I did.

Q. I direct your attention to the second full paragraph on page 2, referring to the last sentence, "He"—referring to Mr. Soubier—"will send Mr. Hatch a regular report in due course"—the letter is addressed to you. Does it refresh your recollection, Mr. Soubier was sending Mr. Hatch a regular report of these investigations?

A. No, but I think Mr. Soubier did send occasional re-[fol. 2645] ports direct to Mr. Hatch.

Q. Don't you remember he sent him Government's Exhibit 557, relating to this trip on the roof?

A. No.

Q. Don't you remember having a great laugh about it at the time?

A. No, because, Mr. Isseks, when you had that story in your complaint, I said I had never heard such a thing; what was it?

Q. You never had the regular reports?

A. I never saw that. I know reports did come in to us from Mr. Hatch.

Q. Anything else you want to say?
A. No.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 560, a letter dated December 18, 1928, on the stationery of Hartford-Empire Company, the photostat we have here from Col. R. D. Brown, addressed to Mr. Henry W. Carter, stipulated as to genuineness by Hartford-Empire, page 17 of the stipulation. I offer it in evidence.

The Court: It may be admitted, over objection.

(Government's Exhibit 560 read by Mr. McCracken.)

Q. You wrote that letter, did you not?
A. I did.

Mr. Isseks: At this time I would like to offer in evidence as Government's Exhibit 561, photostatic copy of an original letter dated March 13, 1930, to Mr. Henry W. Carter from the witness, stipulated as to genuineness by Owens-[fol. 2646] Illinois at page 17 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 561 read by Mr. Lewis.)

Q. You wrote that letter, sir, did you not?
A. I did.

Mr. Isseks: Your Honor, at this time I offer Government's Exhibit 562, carbon copy of a letter dated March 19, 1930, addressed to the witness, signed Owens-Illinois Company, Henry W. Carter, stipulated as to genuineness by Owens-Illinois at page 17 of the stipulation.

The Court: It may be admitted, over objection.

(Same is read by Mr. Lewis.)

Q. Mr. Smith, you heard that letter read?
A. I did.
Q. You received it, did you not?
A. Has it been stipulated?
Q. Yes, Mr. Smith, stipulated by Owens as a copy of a genuine document.
A. Well, I don't happen to remember the letter. If it is in our files I probably received it.

Mr. Isseks: Mr. Wall, do you have the original that was received by you gentlemen?

Mr. Wall: No, I do not.

Mr. Isseks: There is not any question about the fact he received it?

Mr. Haight: I don't know. We will look it up at noon.

The Witness: I don't deny I did receive it. I just don't [fol. 2647] happen to remember it.

Q. There is reference in this letter to a gentleman called Anchor; do you know who he is?

A. No.

(Government's Exhibit 562 read.)

Mr. Isseks: Your Honor, at this time I would like to have marked, what we understand to be the enclosure referred to in that letter, which is Government's Exhibit 562. It is a two-page paper. Both of these have been stipulated as to genuineness by Owens-Illinois at page 17 of the stipulation. We will mark the enclosure as Government's Exhibit 563. The first page is dated March 17, 1930, addressed to Mr. L. D. Soubier, signed "Patent License Department, Henry W. Carter", and has attached to it a list of concerns, one page. I offer both pages in evidence as one exhibit.

Mr. Haight: We haven't any objection, subject to check as to whether we have the original in our files.

The Court: What was the stipulation as to Owens?

Mr. Isseks: Stipulated by Owens in both cases as to genuineness.

The Court: 563 is the report dated March 17?

Mr. Isseks: Yes, Your Honor.

The Court: And the paper attached thereto?

Mr. Isseks: Yes, Your Honor.

The Court: It may be admitted, over objection.

[fol. 2648] (Government's Exhibit 563 read by Mr. McCracken.)

Mr. Isseks: I won't read the list.

At this time, Your Honor, I would like to offer in evidence as Government's Exhibit 564, carbon copy of a letter dated March 31, 1930, addressed to the witness, signed Owens-Illinois Glass Company, Henry W. Carter; the carbon furnished us was stipulated as to genuineness by Owens-Illinois at page 17 of the stipulation. It says that carbon copies went to Messrs. R. D. Brown and W. J. Belknap.

The Court: It may be admitted, over objection.

(Same is read by Mr. Kramer.)

Q. Mr. Smith, remember we had testimony offered here and exhibits relating to the Knox associate companies becoming a licensee, I think it was August 25, 1932, about a month after you entered into the Hazel-Atlas agreement and the new 1932 agreement with Owens. Remember that testimony?

A. Yes.

Q. Now, do you recall or have any record of conferences with one Kucera prior to that time, in relation to a feeder that he put out on the market?

A. Well, I cannot place the time. Mr. Kucera had developed, I think, with Mr. Underwood, or in his plant, a type of feeder, infringing feeder, which was referred to as the Kucera feeder, and Mr. Kucera came to Hartford quite a few times and talked with our engineers and talked with our Patent Department. I think on some of his visits I [fol. 2649] may have possibly attended part of the conference, and we did make an arrangement. I have forgotten now whether through Knox or directly with Mr. Kucera—to take over that feeder. I think that is about my general recollection.

[fol. 2650] Q. Did Mr. Kucera admit that he had an infringing feeder?

A. I told you that, Mr. Isseks. I think he was convinced he had been infringing.

Q. Did he admit it in any contract with you; you made a contract with him, didn't you?

A. Yes. A contract was made with Mr. Kucera.

Q. Do you remember before you made the contract with him, which I will state subject to correction was on the same date, August 25, 1932, that you made that contract with Underwood, do you remember having conference with Mr. Kucera and Mr. Underwood in Hartford?

A. No, I do not. I did not handle personally those negotiations with Mr. Underwood when he took a license, and I just don't happen to remember that both of them were in Hartford. I remember Kucera's coming to Hartford several times talking with our engineers and probably Mr. Eldred, Mr. Pease, and I remember that on some of those conferences I dropped in perhaps ten or fifteen minutes, and that is about all I remember.

Q. You did know, did you not, that Mr. Underwood's company had a contract with Mr. Kucera in regard to Mr. Kucera's feeders?

A. I think that is true.

Q. Do you remember a conference in New York which lasted several days at which you were present and Mr. Kucera and his lawyer and Mr. Eldred?

A. No, but there might have been. I can't imagine a conference for several days with Mr. Kucera.

[fol. 2651] Q. How long do you think it took?

A. I haven't any idea. I don't remember that particular conference.

Q. Do you remember Mr. Safford and Mr. Eldred *was* there?

A. That might be true. I don't remember that particular conference.

Q. And Mr. Kucera, too, and his lawyer,—do you remember his lawyer from Pittsburgh?

A. Yes. He had a lawyer from Pittsburgh at some of these conferences.

Q. What was the deal you finally made with him?

A. I can't tell you in detail. He turned over certain things to us, and I think we gave him an employment contract perhaps for five years, or something like that.

Q. See if I can't refresh your recollection. Don't you remember you agreed to exploit his feeder on the market?

A. No.

Q. Don't you remember you agreed to give him a flat sum of $45,000 plus a minimum annual royalt*ies?*

A. No. I don't think we ever agreed to exploit his feeder.

Q. You remember you agreed to give him $500 for every one of his feeders put out, and a minimum guarantee of $8,000 a year for five years?

A. I remember we employed him for five years. I remember that part of it.

Mr. Isseks: Your Honor, at this time I offer in evidence photostatic copy of the original agreement between Peter Kucera and the Hartford-Empire Company dated August [fols. 2652-2653] 25, 1932, which purports to be signed on behalf of Hartford, by Roger M. Eldred, general manager, and witnessed by Mr. Safford, and which purports to be signed on behalf of Kucera by Peter Kucera and witnessed by one A. S. Fingold. I offer them in evidence. The front of it says property of Hartford-Empire Company, Vault No. 5, Section 9. It was furnished to us by Hartford, and is marked Exhibit 565.

The Court: It may be admitted, over objection.

* * * * * * *

Q. Owens must have paid half of it?

A. I don't think so. I think it was more of an employment contract.

Mr. Isseks: We will come to that and find out.

Mr. Middleton: I assume it doesn't because it is news to us.

Q. Do you say Owens did not pay half of this?

A. I don't think they did but I would have to check it.

* * * * * * *

[fol. 2654] Q. Does that refresh your recollection that it was not an employment contract; to whom did you undertake to exploit this Kucera Feeders?

A. I don't believe we ever exploited the Kucera Feeder.

Q. No doubt about that.

Mr. Wall: I think he was just to use his own good judgment and accept orders for it.

Mr. Isseks: I am trying to refresh the witness's recollection.

Mr. Wall: You are asking things that are not in the contract.

Q. I will ask you, Mr. Smith, whether it does not refresh your recollection that it was not an employment contract?

A. Well, that states that he gets so much a year and if we used him by the day for five or six days he would get $50.00 a day. That part would have something to do with employment, but the rest of it is the acquisition of rights.

Q. That is right. It is an acquisition of rights. You said it was an employment contract. Isn't it a fact it was not an employment contract except insofar as you might hire him for $50.00 a day?

Mr. Haight: I object. The contract speaks for itself. Why should Mr. Smith be compelled to interpret the contract?

The Court: The witness has done so voluntarily.

[fol. 2655] Mr. Haight: Then if the contract is different the witness is wrong.

The Court: He may answer the question if he knows.

(Question read.)

A. I think it was a combination of both. I don't know the technical way to designate what kind of a contract that is.

Q. Let me ask you a couple more questions. Under this contract, so there won't be any confusion, I will read the exact words. I am reading from paragraph d of Section 3, "The license, leasing, and/or selling, or otherwise disposing of such Kucera Feeders shall rest in the commercial discretion of Hartford provided, however, Hartford agrees it will accept a bona fide order under existing terms". Did you ever commercially dispose of by lease, license, or sale or otherwise, of a Kucera Feeder from August 25th, 1932, to date?

A. No, because nobody wanted one.

Q. Did you ever try to exploit them?

A. I can't tell you, Mr. Isseks.

Q. You volunteered an answer where you said because nobody wanted one. Is that unequivocal?

A. That is as I understand.

Q. Are you sure about that?

A. I can't remember any inquiries coming in for Kucera Feeders.

Q. Did you ever hear of Dunkirk Glass Company wanting a Kucera Feeder?

[fol. 2656] A. No.

Q. Did you ever hear of a J. A. Houze Company just outside of Pittsburgh that wanted a Kucera Feeder?

A. Didn't they have one? I think they had one.

Q. What happened to it; do they still have one?

A. I think so.

Q. This contract provides an obligation signed by you people. Do they have one,—have they sold it?

A. Not definitely I don't know.

Q. Was any money at any time paid over to J. A. Houze to stop using the Kucera Feeder?

A. No.

Q. Any effort made?

A. Not that I remember.

Q. Are you clear about that?

A. I have no recollection of it.

Q. So there won't be any misunderstanding, and I am reading again,—I don't want to be questioned as to what I am doing,—did you ever license, lease and/or sell, in your sound commercial discretion, that is the words of the contract, a Kucera Feeder?

A. Not that I remember.

Q. Are there any Kucera Feeders today so far as you know being used in any glass plant in this country?

A. I think there are one or two. Now whether they are actually being used, I can't tell you.

Q. Do you know where the one or two is?

A. I thought House probably had one, but I am not sure [fol. 2657] of that.

Q. Anybody else?

A. Not that I recollect.

Mr. Isseks: At this time I would like to have marked the assignment dated August 26th, 1932, from Peter Kucera to Hartford-Empire Company in consideration of $1.00 of two patent applications. I have no copy. It is a formal document, photostat furnished to us I believe by Hartford. Do you want to look at it, Mr. Wall?

Mr. Wall: No. If it is what you say it is we will let it go subject to check.

The Court: It may be admitted over objection, Exhibit 566.

Q. Now, Mr. Smith, do you remember that you testified with regard to the Hazel-Atlas agreement dated July 1, 1932? I will ask you whether you recall whether or not Mr. I. J. Collins, who was a director, was advised of the participation by Hazel-Atlas in the divisible income which is royalties over and above $850,000 as computed?

A. Mr. Collins did not take an active part in those negotiations, although when they were going on, at least one of the days they were going on he was at the hotel and I consulted with him and told him how the negotiations were running, that Hazel-Atlas would pay a million dollars in damages. That they had a claim against the Owens Company under the Lott Patent, and the Owens Company were willing to give up some of their participation. I thought [fol. 2658] probably we would have to give them some of ours, but there was a discussion going on whether or not payments should go to Owens direct and then let Owens and Hazel settle their own affairs, or how it should be made, and I remember asking Mr. Collins how he felt about it. None of the final details had been worked out. Well, he said, if I remember correctly, he said he did not like it very much. He thought the terms were pretty severe, but we were going to get a million dollars and could go through with some kind of a contract that probably he thought was all right, and whatever day that was, whether it was the second day of negotiations, or the first or third, I can't remember. But at any rate, that was the only discussion at the time negotiations were going on that I had with Mr. Collins.

Q. Now, the minutes of the meeting of your Board of Directors November 9, 1932, at which the various Hazel-Atlas and Owens contracts were approved, and I have a copy of the minutes furnished me by your counsel, indicated you were secretary of the meeting, including every director other than Mr. Collins at the meeting. Do you remember that?

A. I don't happen to remember. If the record shows it, it is correct.

Q. Now then, other than what you testified to, did you ever tell Mr. Collins before the contract was executed on July 1st, 1932, or thereafter, of the fact that Hazel-Atlas was participating in the divisible income?

[fol. 2659] A. We don't think, Mr. Isseks, we ever discussed the contract with Mr. Collins?

Q. Except for the one conversation you have already testified to?

A. Yes. I don't remember any. But later on, several years afterwards, we might have discussed it, but I don't think so. I don't remember any general discussions with Mr. Collins.

Q. As far as you know, did you or anyone in your company tell Mr. Collins that Hazel was participating in the divisible income?

A. I don't actually remember discussing that with Mr. Collins.

Q. Except as to the conversation you have testified to?

A. Oh, yes.

Q. Now, Mr. Smith, do you remember time came between July, 1932, and the fall of 1935, when there were discussions between your company, the Owens-Illinois Company, and the Hazel-Atlas Company with regard to a general revision of the three contracts?

A. Well, I know discussion took place between Owens and ourselves in regards to a general revision.

Q. What precipitated those discussions, if you know?

A. I don't remember in detail. I think the Owens came to us and wanted to know if we would entertain a lump sum payment for their participation in divisible income.

Q. Did they say why?

A. No. I don't know as it was discussed in detail.

Q. Don't you remember that Capstan, one of your licensees, had a favored nation clause?

[fol. 2660] A. Yes, under the Tucker, Reeves & Beatty rights they did.

Q. Under a license you gave to anybody?

A. I don't think I am qualified to answer that.

Q. Don't you remember that Capstan, the head of which was Mr. Rieman, said they had a favored nation clause, and unless they were told how much Hazel and Owens are getting they were going to sue you?

A. Oh, I think they said that quite a few times.

Q. That is right, before 1935?

A. Yes.

Q. Don't you remember they said unless they see those contracts and find out what you were giving to Hazel and Owens they would stop paying royalties?

A. Yes. I remember something like that.

Q. Don't you remember that is what precipitated the whole discussion about having a lump sum settlement?

A. No.

Q. I will see if I can refresh your recollection. Don't you remember you had a conference in New York City at which were present yourself, Colonel Brown, W. J. Belknap, and Mr. Lloyd T. Williams, who was representing Owens, and other gentlemen representing your company, at which this matter was discussed and you said Capstan was making these threats and something would have to be done to clear up the Hazel-Atlas and Owens situation?

A. No, I don't know that. I know perfectly well of Capstan making threats and making a lot of demands, but we [fol. 2661] were quite open and frank with him about that contract. We told him that we were paying Hazel and that we were paying Owens.

Q. Who did you tell?

A. What is the name——

Q. Mr. Rieman?

A. Well, he was there and also Mr. Stewart.

Q. Is Mr. Stewart alive?

A. I think he is.

Q. Mr. Rieman is a defendant in this case?

A. Yes.

Mr. Middleton: What is the approximate date?

Mr. Isseks: Conference May 17th, 1935. I have a memorandum here written by Mr. Williams. It is in Your Honor's book.

Q. Don't you remember you suggested at this conference the thing to do was to eliminate these payments of divisible income and have an agreement for one year with Owens and one year with Hartford that there would be some kind of a lump sum payment in connection with the annual amount?

A. No, I don't remember that.

Q. You would not say it did not take place?

A. I can't imagine what the point of having a one year proposition would be.

Q. Wasn't it suggested there would be separate agreements, one year license with a right to renew at the end of the year, and then the agreement going the other way [fol. 2662] under which you would pay lump sum amounts?

A. I don't remember.

Q. Wasn't that the reason when you finally made your agreement in 1935 for lump sum payment with Owens the fact that Capstan was making threats about bringing out into the open these two divisible income contracts?

A. No, I would not think so.

Q. Wasn't it another reason why you made the payment for fear of the Government stepping in in view of the violation of the Anti-Trust Laws?

A. No.

Q. Are you sure about that?

A. Yes.

Q. What was the reason for making the payment?

A. That suggestion came from the Owens Company and we were very glad to entertain that suggestion because each year as the industry grew they were getting larger payments from us, payments that went beyond what I thought was reasonable because we were doing the work with our equipment, et cetera, and if we could pay up as a lump sum and get rid of it, why, I just thought it was good business. It is like if you had a mortgage on your property. If you get the capital to pay it up and do away with the mortgage, it is a good thing.

Q. Owens are pretty good business men, too, aren't they?

A. I think they have always been pretty good business men.

Mr. Philbin: May it please the Court, perhaps it will aid Your Honor in listening to the present testimony [fol. 2663] to recall that there was no lump sum settlement with the Hazel-Atlas Company in 1935 or since. That is the arrangement with the Hazel-Atlas Company, that has not been changed.

Mr. Isseks: I so stipulate.

Q. Didn't you try to give the Hazel Company a lump sum allowance?

A. Afterwards.

Q. In 1935 before you made your contract with Owens?

A. I don't think so.

Q. Didn't you ask Mr. McNash,—if you had two mortgages and you could liquidate one at a reasonable amount, wouldn't you go to the other mortgagee,—wouldn't you go to McNash?

A. I think later on after we revamped the Owens contract we did go to Hazel and make them an offer.

Q. Don't you remember Hazel signed a contract two days before all the other contracts were signed relating to the rights of the parties, not a lump sum settlement?

A. I don't know what you are referring to.

Q. Don't you remember Hazel was in on the negotiations——?

A. In 1935?

Q. Yes, sir.

A. No.

Q. Don't know anything about it?

A. I don't know whether they knew about it or not, but they were not on these negotiations as I remember when we changed our contract with the Owens Company.

(Recess 20 minutes.)

[fol. 2664] (11:40)

Q. Now, Mr. Smith, when you finally made your arrangement with the Owens people for a lump-sum settlement, who negotiated the price?

A. I was there, and I cannot remember whether Mr. Eldred or Col. Brown were there, perhaps so, perhaps not; Mr. Levis; I think Mr. C. B. Belknap; and there may have been others.

Q. How much was the amount agreed upon?

A. $2,500,000.

Q. Was that the original sum agreed upon?

A. Oh, I think so.

Q. Did they say, "We will take two and a half million" and did you say "O.K."?

A. Oh, no, it didn't come about as easily as that.

Q. Mr. Smith, that is what I am trying to bring out; I am sorry I have to put the question that way; what were the negotiations; how much did you offer them and how much did you finally agree to as the sum?

A. That I cannot tell you. There may have been several prices suggested, but that is the final price.

Q. How did you work it out as two and a half million dollars?

A. Well, naturally, I don't remember any details, I can tell you how we would naturally do a thing like that.

Q. What is your recollection as to how you worked it out?

A. Well, I think we probably took an average of payments that had gone on for the past three or four years, [fol. 2665] and what might happen in the years to come over the balance of the contract, and probably we had some ideas or they had some ideas, but at any rate that was the final sum acceptable to both parties.

Q. Do you remember at one time the sum that was first discussed was $3,000,000 and agreed upon?

A. I don't remember any agreement on $3,000,000.

Q. I mean tentative agreement?

A. No, I wouldn't even say tentative.

Q. Don't you remember you agreed to $3,000,000 and then in consideration of certain suction rights you gave them, it was cut down to two and a half million?

A. No, but I remember that certain suction rights played some part in the negotiations.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 567, a memorandum dated in the left-hand corner, "5-21-35" in handwriting, and similar notation in the right-hand side, and which says at the top, "Owens-Hartford-Empire license memorandum of conference in New York on May 17, 1935, with Goodwin Smith and later with him and Messrs. Brown and W. J. Belknap." It has been stipulated as to genuineness by Owens-Illinois at page 25 of the stipulation, and has at the end, in the left-hand corner: "L. T. W. 5-21-35, 4 copies."

Q. Mr. Smith, was Mr. Belknap your lawyer at that time?
A. W. J. Belknap.
Q. Mr. Lloyd T. Williams was not?
A. No.

[fol. 2666] Mr. Isseks: I offer that in evidence.
The Court: It may be admitted.

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[fol. 2667] The Court: I think I will overrule the objection and admit it on the ground it is not a communication relating to any matters of confidence, of legal advice, as passing between the writer and his concern that he represented, but is a repetition of certain facts transpiring at the conference in New York on May 17, 1935, between himself and Mr. Goodwin Smith and Messrs. Brown and W. J. Belknap. It may be admitted, over objection.

(Said Government's Exhibit 567 read by Mr. Lewis.)

Q. You heard that read, did you not?
A. Yes.
Q. Did that refresh your recollection as to the fact you did have a conference sometime during the early part of the year 1935 at which were present the gentlemen indicated on the top of the memorandum?
A. I have no reason to doubt that, Mr. Isseks.
[fols. 2668-2669] Q. Do you remember that the attitude of Capstan was responsible for the initial negotiations leading up to the final cancellation, or alleged cancellation or whatever you want to call it, of the 1932 agreement, by the payment of a lump sum in 1935?
A. No, I don't remember that. I remember they were

complaining, and threatening, and so on, but I cannot tie that into the contract we made with Owens.

Q. Does that refresh your recollection that you were planning, initially, to have separate agreements for a year with lump-sum payments?

A. No, but I think Mr. Williams,—I respect his veracity, and if he said here, I did suggest that, I probably did, but it doesn't refresh my memory.

Mr. Isseks: Now, I would like to offer at this time an excerpt of the minutes of the Planning Committee of Owens-Illinois Glass Company for certain dates. The only one that I am going to refer to at this time, or the only one I offer at this time, is the one for October 7, 1935. This has been stipulated by Owens as genuine at page 6 of the stipulation.

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[fol. 2670] Mr. Isseks: Why don't we withdraw the exhibit, as far as I am concerned, if counsel will stipulate that at the Planning Committee Meeting on October 7, 1935, "Mr. Lewis reported that the new Hartford-Empire License Contract has been changed to provide that the payment to this company will be two and a half millions instead of $3,000,000, as previously reported, and that this company will receive certain non-exclusive rights under present and future Hartford-Empire patents".

Mr. Middleton: That covers the entire subject. I think it would be proper to put that in and withdraw the exhibit physically.

Mr. Isseks: All right with me.

Q. Mr. Smith, you heard that read, did you not?

A. I did.

Q. Does that refresh your recollection at all?

A. Yes; I think in the negotiations it is probably true that the price of $3,000,000 was first suggested. I think that is probably true. There was only one contract signed, however, and that is what contained the final negotiations.

Q. Anything else?

A. No.

Mr. Isseks: At this time I would like to offer a series of contracts between the various parties, printed documents stipulated to by counsel. The first is the contract between Owens-Illinois Glass Company, Hartford-Empire Company, and Owens-Illinois-Pacific Coast Company. Owens-Illinois is signed by Mr. Levis as president, Hartford by Goodwin [fols. 2671-2673] Smith as president, and it is signed by Boeschenstein on behalf of Owens-Illinois Pacific Coast Company. The contract says, "General license from Owens-Illinois Glass Company and Owens-Illinois Pacific Coast Company to Hartford-Empire". It is dated September 30, 1935, Government's Exhibit 568, stipulated as to genuineness by Owens.

* * * * * * *

[fol. 2674] Mr. Isseks: I offer as Government's Exhibit 569, the contract called "General License from Hartford-Empire Company to Owens-Illinois Glass Company". This contract is dated the next day—October 1, 1935. It is signed by Hartford-Empire Company by F. Goodwin Smith, Owens-Illinois Glass Company by William E. Levis, and at the end there is a statement, "Owens-Illinois Pacific Coast Company accepts certain rights", and that is signed by Mr. Boeschenstein. It is stipulated as to the genuineness by Owens-Illinois.

The Court: It may be admitted, over objection.

* * * * * * *

[fols. 2675-2678] Now, I would like to have marked as the next exhibit, 570, a copy of the amendment to the contract, which I have just read. That amendment is dated January 1, 1936, and was furnished us by counsel for Hartford. It is signed by Hartford-Empire Company by F. Goodwin Smith, and by Owens-Illinois Glass Company by C. B. Belknap, vice-president. That will be Government's Exhibit 570.

* * * * * * *

[fol. 2679] Mr. Isseks: That is true. Now, the last of this series is an agreement between Hartford and Hazel-Atlas. Your Honor will recall the supplementary agreement of July 1st, 1932, which was amended in 1933. This contract is supplemental to the second amendment. It is dated September 29th, 1935. It is between Hartford and Hazel. It is the day before the first one we had in this group. It is [fols. 2680-2681] signed on behalf of Hartford by the witness and is signed on behalf of Hazel-Atlas by Mr. McNash. All these contracts have been stipulated as to genuineness by either Owens or Hartford. This one is a photostat of the original, and I will ask the witness to identify his signature.

Q. Is that your signature on the last page of Exhibit 573?
A. Yes.

* * * * * * *

[fols. 2682-2683] The Court: These agreements, 568 to 573, may be admitted, over objection.

Mr. Isseks: At this time I am going back just to clean up. I would like to have marked in evidence extract of the minutes of the executive committee of Hartford-Fairmont Company dated April 19, 1922. This was furnished to us by counsel for Hartford as being an extract of the minutes for that date. Rather than read all the minutes, I would like to find out who was present at the meeting and then have two paragraphs from the minutes read at this time.

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[fol. 2684] Mr. Isseks: I offer the entire excerpts of the minutes as furnished us by Hartford.
The Court: It may be admitted, over objection.
Mr. Middleton: We of course don't know what is in it. We object to it.

(Paragraphs 2 and 3 of Exhibit 574 are read by Mr. Lewis.)

Q. Mr. Smith, were you advised at all in the latter part of 1937 of the proposed—let's say—deal resulting finally in Anchor-Hocking Glass Corporation?
A. No. I think I must have known that there were negotiations on, but what they were or what form they were taking, I was not advised.
Q. Were you told at all about the fact they were going to take place?

A. I can't tell you definitely. I think somebody told me that Anchor, Capstan and Hocking were negotiating, were going to get together.

Q. Did anybody tell you that they were in need of finances in order to work the matter out?

A. I don't think so, Mr. Isseks.

Q. Did you ever learn at a time prior to the so-called merger that finances were obtained by the people trying to bring the merger about, from various sources?

[fols. 2685-2687] A. Now I don't think I could answer that question. It might have been so, Mr. Isseks, or it might not have been so.

Q. What is your recollection?

A. I don't recollect much about it. I think I was advised or it came to my knowledge. Perhaps Mr. Collins told me.

Q. You mean I. J. Collins?

A. Yes, or somebody else that the negotiations were on to put these companies together.

Q. Did you know at the time before it took place that the Illinois Glass Company of which, as I understand it, Mr. William E. Levis was president, obligated himself to furnish funds in the amount of $2,250,000 to permit the deal to take place?

A. No. I don't think that I knew the details. I might have known the Illinois Company was going to participate, but to what extent or how I was never consulted.

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[fol. 2688] Q. Mr. Smith, am I correct in my understanding of your testimony that you said that someone told you in connection with the Anchor-Hocking deal, that Illinois Glass Company was taking a financial interest but you didn't know how much?

A. I don't think it was the Illinois Glass Company. I think it was the Illinois Company.

Q. A company with which Mr. Levis was connected?

A. Yes.

Q. Otherwise my statement is correct, you heard that the Illinois Company was taking a participation, but you didn't know how much?

A. That is correct.

Q. Who told you that, please?

A. I cannot tell you, Mr. Isseks, who told it to me.

[fol. 2689] Q. Mr. Levis tell it to you?

A. He may have, or Mr. Collins might have told me; I don't remember.

Q. Was your company asked to take a participation?

A. No.

Q. Now, Mr. Smith, the situation in 1934 with regard to feeders was that your company was the only company licensing, distributing or selling feeders for forming glassware in the United States?

A. I think that is true, the only licensing company.

Q. Now, as to formers, in 1934, I am directing your attention to 1934, to your company and the Lynch Company, as to which there were certain contractual relations, as shown by the record, were the only two companies in the forming business, isn't that right?

A. That were steadily in the forming business. Certain shops occasionally built some of our machines for some of our licensees.

Q. Like Hazel?

A. Yes, or Washington Machine Mold Works, and so forth.

Q. I am talking about commercial people who were actively engaged in the business.

A. If that was their only business, yes; like the Lynch.

Q. As to the lehr situation in 1934, what is your present recollection of that situation in 1934? Before you answer that question, would you please state was a lehr is?

A. Well, a lehr is an annealing oven, where the glassware comes out off the forming machine, carried on a conveyor, [fol. 2690] and goes through this annealing oven.

Q. Now, what was the competitive situation in 1934 with regard to lehrs?

A. Well, I think there were several types of lehrs outside of the Hartford lehr.

Q. And what were they?

A. The Amsler-Morton, Simplex lehr, Hazel had their own lehrs built. I don't know whether Surface Combustion had a lehr at that time or not, but somewhere around there they put out lehrs.

Mr. Isseks: At this time I offer in evidence a blueprint of an original letter from the witness to Mr. Amory Houghton, Government's Exhibit 575, on the stationery of Hartford-Empire, addressed to Mr. Houghton, dated October 23, 1934, and signed by the witness, stipulated as to genuineness by Corning Glass Works.

Q. I will ask you, Mr. Smith, whether that is your signature on the blueprint?
A. That is.

The Court: It may be admitted, over objection.

(Government's Exhibit 575 read by Mr. Lewis.)

Q. You wrote that letter, did you not?
A. Yes, I think so, Mr. Isseks.

Mr. Isseks: I now offer in evidence as Government's Exhibit 576, a blueprint of an original letter on the stationery of Hartford-Empire Company, dated December 11, 1934, to Mr. Houghton from the witness, and ask the witness whether [fol. 2691] the signature "Goodwin" on the blueprint is his signature?
The Witness: It is.

Q. And the handwriting on the bottom?
A. Yes.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted, over objection.

(Government's Exhibit 576 read by Mr. Kramer.)

Q. Mr. Smith, you wrote that letter, did you not?
A. I did.
Q. When you wrote on the bottom in longhand, "On forming machines and lehrs we are in a competitive business", you meant on forming machines Lynch and yourself?

Mr. Haight: Is that his writing?
The Witness: Yes, it is my writing.

Q. You meant Lynch and yourself, did you not?
A. Yes, I think so. I am trying to think whether William J. Miller was making some presses at that time. I think probably he may have been but I am not sure.
Q. But on lehrs, you meant the companies you have already mentioned?
A. Correct.

Q. They were the Amsler-Morton, Simplex—what was the other company?

A. Surface Combustion.

Q. By implication, you mean there was no competition on feeders? You wrote this?

Mr. Haight: He asked you "by implication".

A. By implication, no. I don't see that implies that. I [fol. 2692] think it is true we were the only one putting out feeders.

Mr. Isseks: Now, at this time I would like to have offered in evidence as Government's Exhibit 577, blueprint of an original letter on the letterhead of Hartford-Empire Company, dated December 26, 1934, from the office of the president, memorandum to Messrs. A. D. Falck and Amory Houghton, from F. G. Smith; at the end, "FGS/C"; four pages, stipulated as to genuineness by the Corning Glass Works, item 860 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 577 read.)

Q. Mr. Smith, you wrote that memorandum, did you not?

A. I did.

Q. Did you ever reduce your royalty rates on lehrs?

A. We did.

Q. And did you have the conference with Mr. Collins and Mr. Fisher?

A. That I don't remember; I probably did.

Q. Now, did you make any effort to have Amsler-Morton sell out their lehr business to your company?

A. I think there was once when Mr. Morton came to Hartford and discussed the sale of his company, but nothing came of it and I cannot tell you when it was. It was many years ago.

Q. Did he come at your invitation or did he come on his own invitation?

A. That I cannot tell you.

Q. Then you brought suit against Amsler-Morton, did you not?

A. Yes, we sued Amsler-Morton but I don't know—'37 [fol. 2693] or '38, sometime around there.

Q. You lost the suit in the District Court and won it in the Circuit Court of Appeals?

A. I think that is correct.

Mr. Wall: One inadvertent statement. He said, "Then you brought suit". I suppose it is not intended to connect the two transactions at this time.

Mr. Isseks: No, I meant after you had your conference, some time after.

The Witness: Oh, a long time after.

Mr. Isseks: I didn't mean any connection; but the conference took place prior to their lawsuit.

The Witness: Oh, yes, many years before the lawsuit.

Q. In connection with your suit that you brought against Amsler-Morton, did you have any aid from the Owens Company?

A. Not that I remember. You will have to ask my attorneys about that.

Q. Or your associates, some of your associates connected with your company might know?

A. Yes, they might know, but I don't remember of any aid.

Q. Is the Amsler-Morton Company today in the business of licensing, leasing or selling lehrs, if you know?

A. I just don't know.

Q. Don't know either way?

A. No.

Q. Is the Simplex Company today in the business of licensing, leasing or selling lehrs?

[fol. 2694] A. They never did license lehrs.

Q. Did they sell them?

A. Not as a general thing. I think they make special lehrs once in a while for special purposes.

Q. Still do?

A. I think so but I would not know, Mr. Isseks.

Q. In your letter you referred to the Dixon Company. Is that company in the business? I think that last memorandum referred to it. I think you referred to the Dixon Company at the bottom of page 3 of your letter, where you say, "As to the possibility of our furnishing Hartford electric lehrs to the Collins group of plants in competition with G.E., Surface Combustion, Amsler-Morton and Dixon".

A. Then at that time probably there was a Dixon lehr out.

Q. Are they in business now, if you know?

A. I don't think they are. I think they went out of business.

Q. Is the Surface Combustion Company in the lehr business now?

A. Yes.

Q. Have a license from your company?

A. Yes.

Q. Is the General Electric Company in the business of making lehrs?

A. No.

Q. So, as far as you know, today your company is in the lehr business, and the Surface Combustion, as a licensee?

A. Yes.

Q. You don't know about Amsler-Morton, and the Sim- [fol. 2695] plex you said make special types, as far as you know?

A. I think on occasion they do, a special lehr, but I am not sure of that.

Q. Do they have a license from your company?

A. No.

Mr. Isseks: If Mr. Middleton wants those documents in now, I would be glad to mark them. I have never seen them.

Mr. Middleton: I think the Court would like to have the whole story in one spot.

Mr. Isseks: You may mark them as an exhibit on behalf of the Owens Company.

Mr. Middleton: I thought you would put them in as part of your examination of Mr. Smith.

Mr. Isseks: All right. Go ahead.

Mr. Middleton: There are three printed exhibits, which are all dated October 1, 1935, and are a part of the set of agreements executed between Hartford and Owens at that time. Your Honor will recall that the agreement put in this morning as Exhibit 568 was dated September 30, 1935, and that cancelled all then-existing agreements between Hartford and Owens, consequently all of their relationships had to be covered by new agreements, and that goes for all of these, in fact. So I would just suggest that the Government, at this point, use as Exhibit 578, the consolidated feeder and former license and lease agreement, which specifies the form of license and lease thereafter to be used between Hartford and Owens on equipment that was covered by the Hartford lease or license.

[fol. 2696] Mr. Middleton (Continuing): The next agreement, which would then be 579, between Hartford and Owens would be the Consolidated Stacker and Conveyor Agreement, and that specifies the terms and conditions under which Owens had the right to use the Hartford equipment which is known as the conveyors and stackers, the conveyors being the equipment that get the bottles from the machine over to the lehr, and the stacker the equipment which put it in the lehr from the conveyor. I think that is right, is it, Mr. Smith?

The Witness: Yes.

Mr. Fuller: What date is that?

Mr. Middleton: That is dated October 1, 1935.

The next agreement then, No. 580, is entitled "Consolidated Lehr Agreement between Hartford-Empire and Owens-Illinois Glass Company," also dated October 1st, 1935. It recites that by reason of the cancellation of all the agreements between the parties as of September 30, 1935, it was necessary to re-write their agreement with respect to lehrs because of Hartford having developed lehrs and Owens also having had a parallel or independent development in lehrs, and they are covered by that agreement.

Then there is a fourth instrument dated October 2nd, 1935, which will be marked Exhibit 581. It is the agreement between Owens and Hartford-Empire relative to the Libbey Glass Manufacturing Company patents. We suggest this be used merely to complete the picture of agree- [fol. 2697] ment between the parties. This recites the intention or the fact it was contemplated by Owens that it would acquire the Libbey Glass Manufacturing Company assets, and that by reason of their acquiring the Libbey Glass Manufacturing Company assets it was necessary to settle certain patent situations and disputes which existed between Hartford and Libbey, the company whose assets they were buying. They recite the differences and purport to reach some adjustment of them in this agreement which is dated October 2nd, 1935.

Mr. Isseks: Are you all through, Mr. Middleton?

Mr. Middleton: Yes.

Mr. Isseks: Anything further?

Mr. Middleton: No, not unless you want to object.

Mr. Isseks: No, I don't want to object.

The Court: Exhibits 578, 579, 580, 581 may be admitted.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 582 photostatic copy of original letter from Liberty Glass Company, dated May 7, 1928, addressed to the witness and signed Liberty Glass Company by George F. Collins as president. It is stipulated as genuine by Hartford Glass Company.

The Court: It way be admitted, over objection.

(Mr. Lewis reads Exhibit 582.)

Q. You received that letter, did you not, Mr. Smith?

A. I think so.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 583 letter dated Decemer 31, 1929, ad-[fol. 2698] dressed to the witness and signed Owens-Illinois Glass Company, Henry W. Carter, stipulated as to genuineness by Owens-Illinois at page 16. Their stipulation says it is a one page leter. I think it is an advertence. What we have is two pages.

The Court: It may be admitted, over objection.

(Mr. Kramer reads Exhibit 583.)

Q. You heard this letter read, did you not?

A. I did.

Q. You received it, did you not?

A. Yes, if it is stipulated.

Q. It is stipulated by Owens, but I am asking your recollection?

A. I don't happen to remember that particular letter, but I haven't any right to say I did not receive it.

Q. Do you remember the favor you did for Mr. McAbee?

A. We increased his field of ware.

Q. It is a fact later on Owens bought out Hemingway?

A. That is true.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 584, letter dated October 7, 1930, addressed to Mr. Levis at Owens-Illinois Glass Company and apparently signed by the witness, stipulated as to genuineness by Hartford-Empire Company at page 18 of the Stipulation.

The Court: It may be admitted, over objection.

(Exhibit 584 is read by Mr. McCracken.)

Q. You wrote that letter, did you not, Mr. Smith?
[fol. 2699] A. I did.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 585, a letter on the stationery of the Owens-Illinois Glass Company, office of the president, October 11, 1930, addressed to the witness and signed William E. Levis, stipulated as to genuineness by Hartford-Empire Company.

Q. I will ask the witness if the signature on the photostat is that of Mr. Levis?
A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

(Mr. Lewis reads Exhibit 585.)

Q. You received that letter, did you not?
A. I did.
Q. Were Mr. Levins' hopes fulfilled in the matter?
A. I haven't any idea.
Q. I mean this: he said, "I hope that I will see you again soon to talk over situations of this kind with you." Did he ever talk over these things again with you?
A. He might have, Mr. Isseks.
Q. Well, that is a very indefinite answer?
A. Well, I don't remember any particular time.
Q. You did take it up in the correspondence, you initiated it apparently?
A. Oh, yes, I did because one of our licensees was complaining that he could not pay his royalty; that the price of wide mouth ware was so low that he could not make it and [fol. 2700] sell it below cost. He talked a great deal about price levels. He was quite worried. I said I did not know much about this situation but I get your ideas and I will write a letter to Mr. Levis.
Q. Who is that licensee?
A. I haven't any idea. I have been trying to think, but I couldn't tell you who he is.

Q. Mr. Levis says, "I hope I will see you again soon to talk over situations of this kind with you." Didn't he ever have his hopes fulfilled?

A. He might have mentioned that correspondence, Mr. Isseks, when we met some time again. I think it would have been perhaps the natural thing for him to have done.

Q. In the ten and one-half years you don't remember that he ever talked to you about prices again?

A. We talked sometimes about general price levels.

Q. You are not saying he never talked to you about price levels?

A. No.

Q. Mr. Levis is not the kind of a man to not have his hopes fulfilled, is he?

Mr. Middleton: Objection.

The Court: That may be withdrawn.

Q. You don't remember, is that right?

A. I don't remember any particular conversation, but no doubt some time after those letters were written I met Mr. Levis — the subject matter in these letters was dis- [fol. 2701] cussed.

Q. Namely, you told him somebody was complaining and he told you somebody was complaining about prices?

A. Yes, that happened every once in a while.

Q. That is what I thought. You say every once in a while?

A. I mean not once in a while with Mr. Levis, but every once in a while with our licensees.

Q. You took it up with Mr. Levis though each time?

A. Not all the times.

Q. Some of the times?

A. No, but the question was between various licensees of ours.

Q. Whenever it affected Mr. Levis you took it up with him?

A. I would not say that.

Q. You said you took it up with him from time to time?

A. No. I didn't say, did I, from time to time?

Q. Did you ever take it up with him?

A. I think there were times we might have discussed this situation.

Q. Talking about prices?

A. General prices.

Q. Of glassware?
A. Yes.

Mr. Isseks: At this time I offer in evidence Exhibit 586, a letter dated January 28th, 1931, addressed to the witness, signed George F. Collins, president, stipulated as to genuineness by Hartford-Empire, and on the stationery of the Liberty Glass Company, Oklahoma.
The Court: It may be admitted, over objection.

[fol. 2702] (Exhibit 586 is read by Mr. Kramer.)

Q. You received that letter, did you not?
A. I think so, Mr. Isseks.
Q. At that time Universal, Knox and Lamb were not licensees of yours, this is 1931?
A. That is correct.

Mr. Isseks: At this time, Your Honor, I offer in evidence as Government's Exhibit 587 photostatic copy of a letter on the stationery of Owens-Illinois Glass Company, office of the president, addressed to the witness, signed Bill, typewritten in the lower left hand corner William Levis, stipulated as to genuineness as coming from Hartford-Empire.
The Court: It may be admitted, over objection.

(Mr. McCracken reads Exhibit 587.)

Mr. Emery: If the Court please, may I have the objection before on behalf of Thatcher Manufacturing Company, that this not be taken as proving any of the statements contained in it?
The Court: I reserve your objection at the admission for that purpose.

Q. You received that letter, did you not?
A. I think so.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 588 a letter dated January 11th, 1933, addressed to the witness, signed by James M. Beatty. This has been stipulated as to genuineness by Hazel-Atlas Company.
[fols. 2703-2704] The Court: It may be admitted, over objection.

(Exhibit 588 is read by Mr. Lewis.)

Q. Mr. Smith, you heard that read, did you not?
A. I did.
Q. Do you have any recollection of receiving it?
A. It sounds very familiar, Mr. Isseks.
Q. Tygart Valley was not a licensee at that time?
A. No.
Q. It became a licensee in 1936?
A. Somewhere around there.
Q. Fairmont was not a licensee at that time, but became a licensee in 1934?
A. I think that is correct.

Mr. Isseks: At this time I would like to have marked Exhibit 589, letter dated January 16, 1933, addressed to the witness from Mr. McNash, president. This has been stipulated as to genuineness by Hazel-Atlas at page 7 of the Stipulation.
The Court: It will be admitted, over objection.

(Exhibit 589 is read by Mr. McCracken.)

[fol. 2705] Q. My question, Mr. Smith, was whether you rceived that letter?
A. I think so.
Q. Mr. Smith, Obear-Nester is not a licensee of yours?
A. That is correct.
Q. It is a company which has been in litigation with your company, has it not?
A. It has.

Mr. Isseks: At this time I would like to offer as Government's Exhibit 590, letter on the stationery of the Hartford-Empire Company, to Mr. Curtiss, Corning Glass Works, and it has the notation that it is stipulated as to genuineness by the defendant, Corning Glass Works, item 799.
The Court: It may be admitted, over objection.

(Government's Exhibit 590 read by Mr. Kramer.)

Q. You wrote that letter, Mr. Smith?
A. Yes.

Mr. Middleton: I think this letter, Your Honor, should be received with all limitations as to whether or not that binds Mr. Levis, as hearsay.
The Court: It may be admitted, over objection.

Q. Did Mr. Levis tell you what you said in the letter, or did you make up what he told you?

A. Oh, I don't make up things.

Q. Well, I should think not. Did he tell it to you or didn't [fols. 2706-2708] he tell it to you?

A. Is this stipulated as coming from our files?

Q. No sir, stipulated as a copy of a genuine document from the Corning files.

A. Then that is just as good. I wrote that letter.

Q. When you say Levis told you things, where did you get that information?

A. Well, I cannot tell you. Probably Mr. Levis told me that he did.

Q. You wouldn't say it unless Mr. Levis told you, would you?

A. I don't think so.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, over objection.

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[fol. 2709] (At 10 o'clock a. m., March 31, 1941, the trial was resumed.)

F. Goodwin Smith thereupon resumed the stand.

Cross-examination.

By Mr. Wall:

Q. Mr. Smith, I believe you said in your direct testimony that Hartford-Fairmont Company was formed in the year 1912?

A. That is correct.

Q. The original interests, or founders of the Company being—see if I have them correctly—Beech-Nut Company, Monongah Glass Company, and a firm of engineers of Hartford?

A. That is correct.

Q. Those engineers were Lorenz and Honiss, were they?

A. Yes, they were.

Q. Now, when did you first become connected with Hartford-Fairmont Company?

A. 1915; July, 1915.

Q. Had you been acquainted with those three interests which were in the company, which I mentioned?

A. Well, I knew Lorenz and Mr. Honiss, who lived in Hartford, had known of them and their efforts for a few years. I did not become acquainted with the Beech-Nut Packing Company or the Monongah Glass Company until either '14 or possibly early part of '15.

Q. What was the work of Lorenz and Honiss; did they have any particular lines in which they specialized?

A. Well, they had been general engineers who had designed and built special types of machines for various people. They had something to do with the paper industry, [fol. 2710] and previously had done quite a lot of work for the Beech-Nut Packing Company. They developed a vacuum sealing process for the Beech-Nut Packing Company, so that the Beech-Nut jars containing their bacon, and their peanut butter, and their jams, were sealed under vacuum.

Q. By "jars" you mean a vacuum sealing for glass jars?

A. Glass jars. Then they had also developed some grinding machines for the peanut butter, to grind the peanuts, and slicing machines, to slice the bacon.

Q. So that there was, you say, a fairly close relationship between Beech-Nut and Lorenz and Honiss?

A. Oh, yes.

Q. Now, the Beech-Nut Company, you have indicated, were packers of food products?

A. That is correct.

Q. Located where?

A. Canajoharie, New York.

Q. What were the relations between Beech-Nut and Monongah as you found them, upon your connection with the company?

A. The Beech-Nut Packing Company purchased all the glass jars they used, a very large quantity—ran into the millions each year—from the Monongah Glass Company, and those jars amounted to, took such a large sum of money, so that the Beech-Nut Packing Company went to the Monongah Glass Company and said, "Here, our jars are costing us too much. In some way can't you develop or create machinery that will reduce the cost of these jars? Is there any "possibility of these jars being made auto- [fol. 2711] matically rather than by hand?" Those jars at that time, when the company was formed, in 1912, they were hand-gathered, they hand-gathered the glass, put it into a press mold and even some of the men stood there with a heavy lever and pressed the jar. And the Beech-Nut Packing Company said they had been in close touch with the engineers in Hartford who had done very well by them in creating special machinery, they would like to have them make investigation. That was the formation of the company, in '12, the Monongah Glass Company interest, the engineers' interest, and the Beech-Nut Packing Company interets.

Q. Was there a man named Karl Pelier with Lorenz and Honiss at that time?

A. Yes, Lorenz and Honiss had two chief assistants.

Q. And they were whom?

A. One was Mr. Peiler and the other Mr. Lorenz's son, Mr. Edward Lorenz.

Q. The son you mention, Mr. Ed Lorenz, is still with you?

A. He is still with us.

Q. But the elder Lorenz is deceased?

A. That is correct.

Q. And Honiss, of course, this last year?

A. Yes.

Q. Now, at the time you became connected with the Company, which you said was in 1915, tell us what the company had in the way of shop, or office, or both.

A. Well, they had a little—very small—experimental [fol. 2712] room down in the plant of the Taylor & Fenn Company, where they had set up a very small furnace, a room probably half the size of this room, and there they had tested out their feeder in a rather crude way, with glass. I think they would get enough glass to run 15 minutes, or 20 minutes,—something like that,—tested out their first paddle feeder. And from then on they, I think, took the first machine and re-designed that before it was shipped.

Q. Stopping there for the moment, at the time you became connected with them, the shop facilities were as you describe them?

A. Yes.

Q. And the office?

A. Well, Mr. Lorenz and Mr. Honiss had a very, quite a large office, in one of the buildings on Prospect Street.

Q. That was the engineering firm's office?

A. That was the engineering firm's office, where they had the private offices, and then a large drafting room.

Q. The Hartford-Fairmont office was where,—was the business handled out of Lorenz and Honiss' office?

A. Yes, but all the bills, and so forth, were sent to Canajohara, and payment was made direct from Canajohara.

Q. About how many employees did the company have at that time, when you became connected with it?

A. I would not remember, Mr. Wall, probably Messrs. Honiss and Lorenz had 10 or 15 draftsmen, I just wouldn't recollect. Then, down in the experimental shop I think there were three or four men there.

[fol. 2713] Q. You mentioned Taylor and Fenn; is that a machine shop in Hartford?

A. Yes.

Q. Now, what work was going on—I mean, not financing, not office work, but what development work was going on when you first became connected with the company?

A. Well, by that time either one, or I think two of these paddle feeders had been shipped to Fairmont, W. Va. The company had rented an old, small bottle plant which had not been in use for years, but there was a tank there,—on the adjoining property to the Monongah Glass Company.

Q. Fairmont, W. Va.?

A. Fairmont, W. Va. Those paddle feeders were hooked up to the tank. They had to make changes in the tank and rebuild it, and they were operating there under the supervision of Mr. Peiler, with several assistants,—I cannot tell you just who they were.

Q. Without going into technical terms, can you give some very brief description of the general principle of the paddle feeder, and how it operated?

A. Well, as I remember it, I always thought it was something like the steamboat; the paddle was supported by a cross bar on two heavy columns, with cams, and the paddle would dip down into the glass, they had a forehearth, or pool, and pushed the glass, the required amount of glass, out over a spout, like a pitcher spout, and pushed it down, the impelling movement pushing the glass periodically out over the spout. Then it would draw back and push the [fol. 2714] next slug of glass.

Q. That was the first feeder which Hartford-Fairmont built and put into operation?

A. Yes.

Q. You said those were in operation when you came with the company, and that was where?

A. At the old bottle plant, which was rented.

Q. What other work was going on in the way of developing,—anything as to forming machine, or did you get forming machines outside?

A. Well, when I first went to the bottle plant, or shortly, they had purchased a press, semi-automatic press, from somebody, and I think the press and blow, but I am not sure; and those feeders were operating, delivering glass to semi-automatic machines, that were purchased outside, although in the meantime—or perhaps before—it is not clear to me—the engineers were designing,—I think it was before, it must have been sometime perhaps early in '14, it is not quite clear to me,—were designing a full automatic press machine for the Beech-Nut jars, and it was a continuous press, a continuous rotating machine.

Q. Now, the work on the forming machines continued and the development work on feeders and forming machines continued during the teens, 1915 to '20, did it?

A. Well, the bottle plant, which we called the experimental plant, or the pilot plant, was continued two or three years, at least, perhaps four years, before some of the equipment was moved over to the plant of the Monongah Glass Company. In the meantime, in the experimental [fol. 2715] work which was being conducted at the bottle plant, one feeder was working on the making of the Beech-Nut jars. Those jars then were sold to the Monongah Glass Company at their cost figures.

Q. Whose cost figures?

A. Monongah's cost figures. The other feeder was working on milk bottles.

Q. What was the work on milk bottles, was that commercial or experimental?

A. Experimental.

Q. And the work, the other glass production at the Pilot Plant which you have mentioned, what proportions did that assume?

A. Well, we made every day, jars for Beech-Nut and sold, as I have stated, to the Monongah Glass Company. Now, in addition to milk bottles, other types of bottles were experimented with.

Q. Getting back to this production of Beech-Nut jars, I haven't quite finished with that. What proportions did that assume and how long did it continue?

A. Well, that went on till, I think, the actual installation made over in the operating plant of Monongah Glass Company, which took place around '18, the early part of '18.

Q. Well, this production of Beech-Nut jars at the Pilot Plant, was that intended to be a permanent business or a temporary expedient?

A. Well, it was to test out the equipment to be sure that it was operating on a commercial basis; and then when we [fol. 2716] got through that plant was abandoned.

Q. During the first few years of your connection with the company, did you become acquainted with the general setup of the glass container industry as a whole?

A. Why, I would say in a general way, Mr. Wall.

Q. What processes—not in detail, but just speaking generally—what processes were employed in the glass container industry during the years, say, from 1915 to 1920?

A. Well, of course we had the well known process, the Owens Suction Machine, which was an outstanding development, I think it was the first automatic machine ever created to make glassware automatically.

Q. What other methods?

A. Well, then we had the—we found that all, in fact, all the factions, I think except possibly Hazel, who used the flow feed—all the rest of the plants were operated by hand operation, hand gathering.

Q. So that at the time you came into the field, if I have it correctly, there was the Owens automatic production on the suction machine, there was the flow feed with some use by Hazel, as you remember it?

A. I think that is so.

Q. And there was hand gathering?

A. Yes.

Q. Was there any other method then in use to make glass containers?

A. Not automatically.

[fol. 2717] Q. What was the flow feed? Give just a nontechnical description of it, if you can.

A. Well, I don't know as I am able to do that. There was a flowing stream came out of the furnace, shears came in and cut the stream, and I don't think—that is about all, I would imagine.

Q. Did that have any relation to the Brook Patent, so-called?

A. Yes, I think that idea of using the flow stream. Perhaps they caught it in a cup; they may have done that,—that was under the Brook patent.

Q. Then, as to the Owens Suction Machines, were there a large number of suction licensees, as you recall it?

A. Well, there was certainly Ball Bros., who had the exclusive rights for fruit jars; the Thatcher Manufacturing Company had the exclusive rights for milk bottles; there was the Illinois Glass Company, who had a right for prescription ware, and I have forgotten, but I think possibly some liquor license; and the Hazel-Atlas Glass Company had certain exclusive rights on semi-wide and wide-mouth ware; and the Boldt Company had certain exclusive rights.

Q. That is Boldt?

A. Boldt.

Q. The Boldt Company was one of the units that was acquired by Owens-Illinois, or some of its business was? I should may by Owens Bottle Company?

A. Principally, yes.

Q. Long before the Owens-Illinois merger, of course?

A. Yes.

[fol. 2718] Q. Now, what was the effect as you observed it, of the competition by the Owens Suction Machine licensees with the hand gathering shops?

A. Well, of course, it was very disastrous competition to the average glass manufacturer, he was very worried as to how he was going to be able to live against this automatic competition. And another thing that was happening at that time, of course, by the hand process, the hand gathering process, you were not able to produce the high quality glassware, generally speaking, that was produced by the Owens Suction Machine.

Q. In regard to quality of ware, what did you observe as to the product of the flow feed method?

A. Well, that I couldn't tell you in detail, but it was not equivalent in quality to the Owens Machine. I remember somebody describing it as the stream came down, I think it had a cup to it, it gathered up in that cup, like a little piece of rope, and left certain marks on the ware which was being made.

Q. Did you find in the early years of your connection with the Hartford-Fairmont Company, any specialization in product by different manufacturers of containers?

A. Oh, yes.

Q. Just tell us what you found in regard to that.

A. Well, there were people specializing in milk bottles, made nothing else. There were other people specializing in pressure ware.

Q. By "pressure ware" you mean what?

[fol. 2719] A. Well, beer bottles or pop bottles or soda bottles.

Q. Carbonated beverages, for example?

A. Carbonated beverages. And there were other people specializing in packers ware. Monongah Glass Company, of course, specialized in pressed ware. Hocking Glass Company specialized in table ware, generally speaking. There were a few that had probably made a more,—a broader line of ware than some of the others, but the industry more or less had its normal fields of ware. That was due to the fact, one of the reasons was that the hand gatherer,—who was an artisan in his trade,—day after day he gathered the chunk of glass that would go to make a milk bottle mold, and he would become more expert at that.

Q. And did these different products require different molds also?

A. Oh, yes.

Q. Was that a substantial item of expense or not?

A. Very.

Q. Was it, as you observed, necessary to have an inventory of the products in which the manufacturer dealt, necessary for him to stock his line of ware?

A. Oh, yes.

Q. Well, did you learn, and can you tell us whether or not the sales channels for, for instance, milk bottles, perfume bottles, tumblers, and other kinds of containers, were the same?

A. Well, I think I know what you mean.

Q. Did they all pass through the same sales channels, or [fol. 2720] through different channels?

A. No, they were different channels. The man selling narrow-neck ware had a different sales organization, agents, I think a good many of them sold their ware through agents, and if an agent represented one house he probably didn't represent another house; but I am not absolutely clear on that.

Q. This condition which you have described of specialization, did that apply to the hand shops as well as to the

Owens licensees; had the old hand shop specialized, or given their time to special lines of containers?

A. Yes, that is what I was talking about.

Q. Was the same thing true as to the Owens licensees?

A. Oh, yes; although the Owens licensees may have done less selling through agents, or representatives; they may have had their own sales force. I canot tell you.

Q. Were these Owens licensees, for the most part, smaller units in the industry, or the larger ones?

A. The larger ones.

Q. You mentioned Hazel-Atlas in connection with the Owens Suction method, and also the flow feed; did that company employ both methods?

A. I think so.

Q. What kind of a shop was the Monongah shop, was that a suction shop or hand gathering shop?

A. Hand gathering.

Q. Until the time when your feeders were installed there?

A. That is correct.

[fol. 2721] Q. You mentioned the work of the Pilot Plant upon milk bottles. Was that one of the first lines of ware which your company licensed?

A. It was, Mr. Wall.

Q. When did you begin the development, and tell us how you got into the licensing of that kind of ware?

A. Well, a great many people, of course, visited the Pilot Plant at Fairmont, W. Va., and they saw us making milk bottles there. It must have been certainly by the latter part of '15, and perhaps those experiments started previously, previous to my connection with the company; we found out a very interesting thing, a rather disturbing situation, because the little semi-automatic machine that was serving the feeder that was making milk bottles was so inefficient and so slow that it could not keep up with the feeder. And so we at once started to design a full-automatic milk bottle forming machine, which was a type of a press-and-blow machine, and I always felt that that was quite a remarkable undertaking, because within one year that machine was designed, tools were designed, machine patterns were made, and the machines were built by the Ed Miller Mold & Machine Works in Columbus.

Q. Is that the same Ed Miller who has been mentioned in the testimony previously?

A. Yes.

Q. He then had a shop in Columbus, did he?

A. That is correct.

Q. And built your first milk bottle machine?

[fol. 2722] A. That is correct.

Q. Now, these milk bottle machines were hooked up, were they, with your paddle feeder?

A. That is correct. So we had one complete unit. If you couldn't have a proper forming machine to go with the feeder, you weren't very well off.

Q. Now, that combination of paddle feeder and milk bottle machine, was that what you call your "milk bottle unit," back in those days?

A. That is correct.

Q. Is that the unit which was licensed and put out among some milk bottle manufacturers?

A. Yes; we had four milk bottle manufacturers. J. T. & A. Hamilton Company of Pittsburgh took a license; the Essex Glass Company took a license; the Travis Glass Company took a license; and the Lockport Glass Company took a license. Those four concerns took this paddle feeder milk bottle machine license and gradually machines were installed.

Q. As you recall it, was that the first unit of your own development, that is of feeder and forming machine which was licensed, put out?

A. I think it was. The first one, the first unit went in the plant of J. T. & A. Hamilton some time in the latter part of '16, I think.

Q. Did Hamilton have some connection with the Monongah Glass Company?

A. I think he was a stockholder.

[fol. 2723] Q. And did I understand you to say Hamilton had seen your machine operating at Fairmont?

A. Oh, yes, and so had the other manufacturers.

Q. And did your first work have anything to do with the milk bottle trade or the question of licensing your machines and feeders?

A. Yes.

Q. What did you do about it?

A. Well, first of all we figured out what we felt the royalty should be.

Q. Was that your first work, or did you first make a trip around to look over the industry?

A. Oh, I made a great many trips, Mr. Wall, to various parts of the country, visiting various plants. Everybody was interested, naturally, in this new development; they looked upon it more or less as a lifesaver for them.

Q. And did you have any associates from the company with you in this work of looking over the field and trying to work out a licensing policy?

A. Well, I remember that on a great many trips Mr. Peiler went with me.

Q. How about Mr. Cunningham?

A. He may have, on some, but I don't think in general he went around with me.

Q. What was Cunningham's first name?

A. Robert.

Q. He was with Monongah Glass Company, was he?

A. He was, I think, treasurer of the Monongah Glass Company.

[fol. 2724] Q. An associate of Heintzelman?

A. That is correct.

Mr. Wall: I would like to have marked as an exhibit at this point, Your Honor, a report made at a directors' meeting of Hartford-Fairmont Company, dated July 23, 1915. I am marking the photostat, although the original is here.

(Thereupon, after discussion by the Court and counsel, it was agreed that the defendants' exhibits would start with the number 5,000, using the prefix "H" for Hartford, "O" for Owens, or Owens-Illinois, "B" for Ball Bros., "LC" for Lynch Corporation, "AH" for Anchor-Hocking, "HA" for Hazel-Atlas, "GCA" for Glass Container Association, "C" for Corning, "T" for Thatcher, and "L" for Liberty Glass Company.)

The Court: So the first exhibit will be H-5001.

Q. I show you this photostat which has been marked H-5001, and I call your attention to the signatures on the last page. Do you recognize those, and if so, whose are they?

A. That is my signature as chairman, Mr. Peiler's signature, Mr. Robert T. Cunningham's signature.

Q. Do you recall whether those three men you mentioned,—yourself, Peiler and Cunningham,—were a committee at one time for the Hartford-Fairmont Company in connection with the question of licensing and development?

A. Yes. That was 'way back in the beginning of the company, before my permanent connection with the company.

[fol. 2725] Q. Please look at the exhibit sufficiently so you can tell us whether that is a report which the committee submitted to the company at the time shown on the front page.

Mr. Isseks: I don't question the authenticity, Your Honor.

Q. (Cont'd.) Take enough time to be reasonably familiar with it; I may want to ask you some questions.

A. (After examining same.) Yes, that is a report made by the committee.

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The Court: It may be admitted.

Mr. Emery: If the Court please, this may in some cases produce a situation somewhat similar to the situation of the various defendants in relation to the government's exhibits, and may it be understood for the present, as to each [fol. 2726] defendant other than the one who is offering it, that there may be an objection on the same general basis we have had before?

The Court: On the basis of its relevancy and materiality?

Mr. Emery: Yes.

The Court: Yes, I think that may be done. I think it may be understood that there is an objection on the part of each of the other defendants. It is not necessary for the Court to save an objection for you or for the objection to be made.

Mr. Isseks: I make it clear, the government is not objecting to this document. If we would have had it we would have offered it ourselves.

The Court: It may be admitted.

(Mr. Carlisle read from page 5 of the same exhibit and following pages.)

Q. Mr. Smith, at the time this report was made in 1915, had any of the patents, as you now recall, had any of the patents of your company been issued?

A. I think not.

Q. I want to call your attention to paragraph six, under the heading of "Remarks" on page 13, so marked in longhand, "Although your committee realizes that a considerable amount of money has been invested in the enterprise, it is led to believe that the patents alone which Hartford-Fairmont now owns", and so forth.

A. That probably referred to patent applications filed [fol. 2727] in the Patent Office.

Q. When you refer to a machine, or a semi-automatic machine, do you refer to the feeder or forming machine?

A. To the forming machine.

Q. I notice generally you use the name "machine" to apply to the shaping or forming machine?

A. That is correct, and usually speak of a feeder as a feeder.

Q. I call your attention to paragraph 2, under the heading of "General Remarks" on page 14: "The Owens Machines have so threatened the existence of the smaller concerns that semi-automatic machines have been rapidly developed."

A. Semi-automatic forming machines.

Q. Will you tell us whether this report states the conditions and the facts as they existed at the time, and as you knew them?

A. I think so, Mr. Wall.

Q. There is reference in Exhibit H-5001 to the question of licensing and working out a licensing policy, and a form of contract; do you recall that?

A. I remember there was quite a lot of work done on it, Mr. Wall.

Q. You remember there is such reference in the exhibit as it was read here?

A. Yes.

Q. Now, when, if you recall, did your company, Hartford-Fairmont, reach a decision as to whether it would license its equipment and methods, and if so, what the form [fol. 2728] of the license would be?

A. Well, I cannot tell you just the dates. In 1916 we did sign licenses, license and lease agreements with the four milk bottle concerns, and the license fee was to be somewhere around the cost of the machine. I think in those early days it was probably just a little bit above the cost of the machine. And the royalty rates were established at, generally speaking, one-third of the hand gatherer's wages. In other words, if the feeder could replace the hand gatherer, whatever he was getting, two-thirds went to the licensee and Hartford-Fairmont took a third.

Q. Now, can you fix any way at all, the approximate time when the company had decided upon the licensing policy, and upon the policy of leasing equipment?

A. I think that was always in our minds. As regards the final draft of what represented a standard license and lease, it must have been in '16 sometime.

Q. I wasn't speaking of final contract forms so much as of the decision which at some time or other was arrived at, that the Hartford-Fairmont would license and lease rather than sell its equipment.

A. Well, certainly that was in the minds of everybody when I went with the company in 1915.

Q. Did you have any part in the working out of that policy, or making the decision as to the form of the licensing?

A. Not the legal end.

Q. No, but the business end?

A. Yes.

[fol. 2729] Q. Can you say whether or not that decision had been arrived at soon after, a matter of some months perhaps, after this report of July 23, 1915?

A. It was very shortly after that, I would assume.

Q. Can you tell us whether it was arrived at, the decision to lease your equipment rather than to sell it, before you made the agreement with Empire Machine Company in 1916?

A. Oh, yes.

Q. Did Empire Machine Company or any of its officers or employees have any part in that decision?

A. None at all.

Q. What was the reason, the principal and controlling reason, or reasons, for deciding to lease your equipment?

A. Well, first of all we felt, here, this very revolutionary invention, new process, automatic process of producing glassware, was going to become very, very valuable, and that we would have it protected by patents; and it seemed to us that rather than selling machines outright we would make more money by licensing and leasing them; and, also, we wanted to continue as a development company creating new things for the glass industry, and in order to do that, why, you have to have a continuously-flowing income, because research and development work and creative work is always very expensive.

Q. Now, you decided also, did you not, in the early years, say of 1915 or '16, that your licenses would be granted for specified fields of ware?

A. That is correct.

[fol. 2730] Q. What considerations led you to make that decision?

A. Well, that is the way the industry, the way we found the industry, specializing, and here were the Owens Suction Machines divided up into special fields of ware, and we saw no reason, if a man was making certain kinds of ware, to give him the right to make everything, because as the industry was established, why, we would be giving him a capital asset that he didn't require but we might sell to somebody else.

Q. Which you desired to sell?

A. Which was our property and we desired to hold that in our own hands.

Q. Did you have any problems as to supplying the full equipment,—that is to say the feeder plus the forming machines, for different fields of ware, did you have to give different forming machines for different fields?

A. Are you talking about our own forming machines?

Q. Whether your own machines or not. The licensee would require a forming machine to go with his feeder, wouldn't he?

A. Oh, yes, of course.

Q. You aimed to supply those, did you?

A. The forming machines?

Q. Yes.

A. Yes, we soon found out, much to our distress, that we had to create and design and build our own forming machine.

Q. Why was that?

A. Because those which you could purchase from outsiders [fol. 2731] simply would not do sufficiently good work, or were not fast enough to keep up with the feeder, and we just had to turn around and design forming machines that would operate with the feeder efficiently.

Q. Could you design, and did you design, any one forming machine that would serve all the fields of ware?

A. No, the first machine was a continuous press, which cost us a great deal of money, that turned out to be a failure.

Q. Who was that designed for?

A. That was for the Monongah.

Q. For the pressed-ware field?

A. Yes. So the next machine was the milk-bottle machine, forming machine. Then we built——

Q. Stop just a moment. The milk bottle forming machine was called a press-and-blow machine; it uses the press and blow method?

A. Yes.

The Court: I think you may suspend at this point, and the bailiff will recess court for 15 minutes.

(Recess taken.)

[fol. 2732] (Morning recess.)

The Court: Proceed.

Q. Just before recess, we were speaking, I believe, of the development of the first press you made for Monongah; and then of the milk bottle machine. Proceeding from there, did the Hartford-Fairmont Company develop some other forming machines for different fields of ware in the years before 1920?

A. Oh, yes. About the time, or shortly after we developed the milk bottle forming machine, we developed what we called a twin press, an automatic twin press for Monongah. The first continuous rotating press having been a failure, we developed a pressing machine that had two tables, and both of those machines were fed by one paddle feeder.

Q. A two-table press, in which the parison, if you call it that, was transferred from one table to the other?

A. No, sir.

Q. What was it?

A. What we called the twin press, where a gob of glass went into a mold on one table, was pressed, and another gob was shot to the other table.

Q. So each table produced completed articles then?

A. I think so, Mr. Wall.

Q. In addition to the twin press—that was also for the Monongah field?

A. That is correct.

Q. Did you produce another forming machine for other fields of containers?

[fol. 2733] A. Yes: I cannot tell you just the dates, but certainly by 1919 we had started work on two quite extensive developments: one was an automatic narrow neck bottle machine; and the other was an automatic press and blow machine; and we felt that we had to do that because forming machines, as I stated a little while ago today, were not able to keep up with the feeder and produce the quality of ware which our licensees demanded.

Q. Did this necessity of producing your own forming machines have any bearing upon your licensing of the different fields, and furnishing your equipment for the different fields of ware?

A. Not so far as the different fields of ware, no.

Q. Different type of ware, such as bottles and press work?

A. If a man was making narrow neck bottles, he needed a good narrow neck forming machine to go with the feeder. If he was making a semi-wide or a wide mouth type of job, he needed a good press and blow machine to go with the feeder.

Q. In the early days of the company, which we are talking about now, prior to 1920, was any selection made of licensees on the basis of operating skill and financial stability?

A. Certainly; financial stability.

Q. What was the reason for that?

A. In the first place, we only wanted good, strong, healthy licensees; and there was considerable investment involved in the installation of our equipment. In most places, tanks had to be changed. Auxiliary equipment might have to go in. With some of the early machines, pits had to be made [fol. 2734] in the floor so as to get the proper drop from the feeder. The drop would slide down the troughs; and the tanks in those days were not high up in the air; they were, rather, lower, and there was not sufficient room between the forming machine and the outlet in the tanks. So the licensees had to change their plant around considerably.

Q. In addition to the expense of installing, was there a change required in operating methods of your equipment?

A. Of course you had to have trained feeder operators;

and certainly there was considerable to be learned about the automatic forming machine.

Q. What part did your company have in installing equipment, instructing manufacturing personnel and those matters?

A. Quite a little. Our men were at the plants time and time again. And I shall never forget the installation of the milk bottle machines up at the Essex Glass Company, Dunkirk. We had guaranteed when we went in there that the machines were to produce a certain percentage of good ware. We had great difficult in making good. It took us months and cost us a great deal of money, because, first of all, the organization was not a mechanical organization; the operation of their furnace, we felt, was not such as we required; the quality of the glass could have been improved; and we had pretty trying days.

Q. In regard to Essex, was it also an expensive time for you?

A. Very, very.

[fol. 2735] Q. Your company, in the initial installations you made in the milk bottle field and elsewhere, furnished some service to the licensees, did it?

A. Oh, yes.

Q. The extent of that,—what was it?

A. I cannot tell you, Mr. Wall; but here was a brand new piece of equipment going into a plant which never had any automatic means of producing glassware. The people had to be trained. There was the question of the operation of the tanks. I remember we had a good deal of trouble in the early days because the licensee failed in keeping the level of the glass in his tank constant, because he was filling the tank by a sort of rule of thumb method, dumping in whole piles of batch here and there; and if the level in his tank went down, of course that affected the amount of glass that the paddle produced. They were very trying days.

Q. Did you find any difference in the amount of service and service expense required by the feeder operators in the glass field—whether that required by the less efficient operators, was more expensive to you than others?

A. Oh, yes, the better the organization was, the better off we were, of course.

Q. And the less expense for service and instruction?

A. Yes, sir.

Q. Was that a factor at all in your selection of licensees in the early days?

A. I think that is all tied up to the question of wishing [fol. 2736] strong, healthy, prosperous manufacturers; those with the best reputation in the trade; those with the best financial standing. And along with that, naturally, went a better organization.

Q. Good glass men?

A. Good glass men.

Q. You have mentioned milk bottle installations: I think you told us there were four; and have you told us the names of the four licensees?

A. I think I did. They were Lockport Glass Company; Travis Glass Company; J. T. & A. Hamilton; and the Essex Glass Company.

Q. Did those licensees you mentioned continue in business for some time?

A. No, only a few years. Later, their assets were purchased by the Thatcher Manufacturing Company.

Q. When was that; if you recall?

A. I cannot tell you just the date.

Q. About 1920?

A. I think some time in 1920, but I am not sure.

Q. Upon that purchase, Thatcher became the sole licensee for the time being of your equipment?

A. For the paddle needle feeders and for the milk bottle press and blow machine.

Q. What part, if any, did the Hartford-Fairmont Company have in bringing about the purchase of those four companies by Thatcher?

[fol. 2737] A. That I cannot tell you, Mr. Wall. Of course Thatcher had to come, or the licensees had to come to us to get permission to transfer their license and lease agreements.

Q. And did they do that?

A. They did; and I suppose the whole deal was talked over; but I cannot remember just what part we played.

Q. Did you initiate or bring about the purchase of the four licensees by Thatcher?

A. I don't think we initiated it.

Q. What part did you have in it, aside from transferring the licenses?

A. Probably the Thatcher Company talked to us about it.

Q. Tell us, Mr. Smith, how the deal originated, that is, whether it originated between Thatcher and your licensees, or between you and Thatcher, or between you and your licensees?

A. I have no remembrance of Hartford's originating it.

Q. What is your best recollection, then, that it did or did not initiate it?

A. That it did not.

Q. Your development of feeders continued with the change from the paddle feeder to the paddle needle feeder, at some time, did it not?

A. That is correct.

Q. Can you tell me about when that was?

A. I would say about 1918.

Q. Again, to have a non-technical description of what the [fol. 2738] paddle needle feeder was, can you tell us about that?

A. It had been a paddle that just pushed over the required amount of glass over a lip, and, as the glass levels in the tanks varied, we ran into considerable trouble in keeping or having the licensees keep those levels constant. The needle idea, of course, was an adaptation of Peiler's early plunger feeder, and was changed so the paddle paddled over the glass and kept the bowl full of glass constantly. And then the needle was used—I think you will have to check up with the engineers—the needle was used to push out the gob of glass.

Q. Through an orifice in the bottom of the bowl?

A. Through an orifice.

Q. Was that attachment put on the existing paddle feeders or was it an entirely new device?

A. No, it was put on the existing paddle feeders.

Q. By the time when you got to the paddle needle feature stage, you had already made some acquaintance with Empire Machine Company, had you?

A. The 1916 agreement was negotiated by the patent attorneys.

Q. Who were they?

A. Mr. Honiss, I think the record of last week will show, and Mr. Dorsey, handled most of that. I cannot tell you when I first met the principals of the Corning Glass Works; but I would say it was probably the latter part of 1918 or the first part of 1919. I would not know.

Q. You had not met them then during the negotiation of [fol. 2739] the June, 1916, agreement, is that right?

A. Not that I remember of.

Q. What was the occasion for your patent counsel meeting with the patent counsel of Empire as to an agreement in 1916?

A. An interference in the Patent Office.

Q. The interference was between your inventor, Peiler, was it?

A. Yes, sir.

Q. On the one hand; and who was the other party?

A. Mr. Chamberlin.

Q. Mr. Chamberlin was an Empire man, was he?

A. He was.

Q. Do you know what subject matter was covered generally by the interference? I mean by that, in very general terms, whether it was the feeder or former, and what kind of feeder?

A. It was the feeder.

Q. What kind of feeder?

A. I think it surrounded the paddle feeder.

Q. Was there an invention called the heated hood?

A. That is it.

Q. On the heated hood feature, one of the two?

A. Yes, sir.

Q. Was this the first interference relative to that invention?

A. I think it was, Mr. Wall.

Q. What were the reasons which moved Hartford-Fairmont Company to make the agreement with Empire which was made in 1916?

[fol. 2740] A. Interference with that company. They wanted rights which we were not interested in, and vice versa. They wanted rights,—rather, they gave us rights we were interested in, namely, the general container field.

Q. That general container field, and the need of that field, were they the things that brought you into agreement?

A. Yes, sir.

Q. Had you done any work on experimenting in the fields of special glasses or bulbs?

A. Not at all.

Q. At the time that agreement was made in 1916, did you have any intention of trying to get into those fields in the near future?

A. None whatever.

Q. What machines did Empire have at the time when you made this agreement of 1916? I mean, of course, glass making machines, feeder or former, or similar machines?

A. I don't know as I can tell you. They had Type E machines, which were hand-fed. And they may or may not have been working on a full automatic bulb machine, called the Canfield Machine; but somebody would have to check me.

Q. At any rate, did you get from Corning at any time, or from Empire, any automatic forming machines or forming machine rights which you used within the container field?

A. No, sir.

Q. On the other hand, did Empire Machine Company have a glass feeder in 1916?

[fol. 2741] A. Not that I know of.

Q. You mentioned some interferences beginning in 1916, did you not?

A. Yes, sir.

Q. Were those within a short time disposed of, or did other interferences take their place?

A. The other interferences came in.

Q. Later in the year?

A. I can't tell you when they did, but very shortly.

Mr. Wall: If Your Honor please, I might say that the subject of interferences and the existence of them and their dates is a matter of stipulation between the government and ourselves, and at a proper time we will take that up.

The Court: Very well.

Q. Some time after the Empire Agreement of 1916, did you hear of a man named Steimer?

A. Yes, sir.

Q. Who was he, if you know?

A. He was an inventor. He had an application in the Patent Office. I think it was brought out last week that his application was purchased jointly by the Empire Machine interests and the Hartford interests.

Q. What was the reason for buying the application or applications?

A. I suppose that——

Q. Your own state of mind and your company's, at the time?

A. Well, they were in interference with the Chamberlin [fol. 2742] and Peiler applications, the patent attorneys recommended that we buy them, so we bought them.

Q. Why was the purchase made jointly, Mr. Smith, by Empire and Hartford?

A. Because it involved the original subject matter of Chamberlin and Peiler, as I understand it.

Q. As you recall, did Mr. Steimer have any machines operating?

A. No, sir.

Q. And at the time of your purchase, were there any issued Steimer Patents, as you recall it?

A. Not that I know of.

Q. So the subject batter of the purchase was what,—applications?

A. Yes, sir.

Q. Which were in interference with Peiler and Chamberlin?

A. That is correct.

Q. Back in the early days of your development, which we have been going over, was the original paddle feeder shown to any other glass men or inventors?

A. Oh, yes.

Q. Can you name some of them?

A. People came to Hartford, to the little shop there where the very early preliminary experiments were conducted. And then a great many people came to Fairmont, to the bottle plant there, experimental plant, to see the feeder in operation. I cannot name them all.

Mr. Isseks: If Your Honor please, unless the witness [fol. 2743] knows himself, I suggest that his testimony be limited to whether he saw any gentlemen there, or was told by the gentleman himself: otherwise, I submit it is improper.

Mr. Wall: I will confine my question first to that; but I do not agree that we cannot show the background of Mr. Smith's knowledge and state of mind. We have been establishing that, I think, for over a month.

Q. First, whom did you see or personally know of seeing your pilot plant or your Hartford machine?

A. Mr. Bracken.

Q. Who was he?

A. Federal Glass Company. Mr. H. L. Dixon, who was a general furnace contractor and did work for all kinds of glass plants; he came to Hartford; and then Fairmont; representative of Owens Company came there.

Q. Can you name them?

A. I personally remember Mr. Cochrane, their general manager, came down. Mr. Tigner and representatives of the Essex Glass Company came there. Mr. Dilworth, of Salem Glass, came there. Well, I know there were quite a few others, because this had circulated like fire through the industry, and a great many people came to see the machines.

Q. Now, Mr. Bracken, you said came from the Federal Glass Company?

A. Yes, sir.

Q. Were there any other people from Federal at Hartford to see the feeder, that you now recall?

A. There may have been, Mr. Wall, but I just don't remember.

[fol. 2744] Q. Is that the company with which Tucker and Reeves were connected?

A. Yes, sir.

Q. Did you learn or did you know personally of any visit from William J. Miller at your pilot plant at any period of early development?

A. I don't think I met him personally. He did come there, but I don't think I have a personal recollection of meeting him there.

Q. Was George Howard—he was one of the inventors?

A. He was one of the——

Q. Did he work for your company at any time as early as 1915?

A, My recollection is not clear on that. We may have asked Mr. Howard to do some statistical work for us. I think we did, but I am not dead sure.

Q. Do you know whether Mr. Howard at an early date saw your feeder in operation either at Hartford or the pilot plant in Fairmont?

A. There is no question that he saw it at the pilot plant. Whether he came to Hartford or not, I have no personal recollection.

Q. Were you advised at the time that Mr. Howard had seen your feeder at some time back in those early years?

A. Oh, yes, I don't think there is any question about that.

Q. And Mr. Miller?

A. I don't think there is any question about that, but I have no personal recollection of Mr. Miller's visiting Hartford.

[fol. 2745] Q. What I meant to get was whether, back in those early years, it was brought to your attention that these gentlemen had seen your feeders in operation?

A. Yes, I think it was. There were quite a few visitors.

Q. Did these gentlemen's interest in the feeder, and the view of it by representatives of the various companies, do anything to stimulate feeder inventions by others?

A. Oh, yes, very naturally.

Q. What was the result?

A. You have the Miller—William J. Miller filed applications in the office immediately. You had Tucker, Reeves and Beatty developing a feeding idea shortly after that. And everybody was interested.

Mr. Isseks: If Your Honor please, I move to strike out the word "everybody." I do not mind at all if he can list them. I don't know how many there were. I did not file any.

The Witness: Every man in the industry was interested.

Mr. Wall: Mr. Isseks was too young. I will try to limit this to people whom you have named.

Q. You have Tucker, Reeves & Beatty, and Howard, and Miller?

A. And Cochran, of the Owens Company.

[fol. 2746] Q. I am speaking of those who developed some feeder invention later after seeing your feeder. Those three you have named. Was there a man named Rankin around somewhere?

A. Rankin came over here across the water and saw our feeders in operation, and eventually filed application in the Patent Office.

Mr. Isseks: I hate to interrupt you, but I wonder whether Steimer and Hitchcock also saw the feeders?

Q. The gentleman would like to know whether Mr. Hitchcock saw your feeder?

A. I can't tell the gentleman.

Q. Mr. Hitchcock had some patent which ante-dated your work, did he?

A. He had a patent issued which we bought later on, perhaps '17, around there I suppose—well, I don't just know whether he actually saw it.

Q. How about Steimer; do you know about that?

A. I know it has been reported to me that Steimer was a very old man. I don't know whether he saw the feeder or not.

Mr. Isseks: How about Mr. Lott?

Q. Did Mr. Lott.

A. I can't tell you that.

Mr. Isseks: Anybody else; I would like to know who it is?

Q. Will you oblige counsel, if you can. He would like to know everyone that you know of that saw the feeder?

[fol. 2747] A. I am sorry, I would not be much better in that than I was last week trying to oblige.

Q. The Tucker, Reeves and Beatty Feeder, the first one that was put out, was the flaming cup feeder?

A. That is corerct.

Q. Did that use a plunger or not?

A. Not at first.

Q. Then later on, at some later date a plunger was used?

A. That is correct.

Q. You mentioned Mr. Cochran as one of your guests at Fairmont. How about Michael Owens? Do you know whether he was there?

A. I know he did come here but I don't think that I was present when he was there.

Q. Were you advised of his business there?

A. Yes.

Q. Now by the time you had been with Hartford-Fairmont Company for a year or two, and Michael Owens and Cochran had been down at Fairmont, was any suggestion received by your company about infringement of patents by you?

A. Yes.

Q. From whom?

A. From the Owens Company.

Q. Can you fix about how long you had been with the Hartford-Fairmont when those suggestions began?

A. Well, I would say two years or thereabouts. The suit that they brought against us was I think in 1918, the [fol. 2748] early part, and whether notification was given the latter part of 1917 I just don't remember, Mr. Wall, but I think probably the latter part of 1917.

Q. You mentioned this suit brought against you in 1918. Was that a suit on the Brooke Patent?

A. Yes.

Q. The flow feed patent we referred to heretofore?

A. Yes.

Q. As being used by Hazel-Atlas?

A. That is correct.

Q. Before that suit was brought had you had any contact with Hazel-Atlas or its officials?

A. I took one trip to Washington, Pennsylvania, with Mr. Peiler not long after I joined the company, and we interviewed Mr. Oliver, who was then general manager. Mr. Oliver seemed quite interested in what we were doing and asked us if before we really got under way, we would not take matters up with him. In other words, he showed an interest in our development.

Q. Did you take up matters with him after that?

A. No. We did not.

Q. Before the suit was begun in 1918 a gentleman named Brady was president of Hazel-Atlas, was he?

A. I think that is correct, Mr. Wall.

Q. Did you meet Brady before the suit was begun and with reference to a settlement of differences as to patent infringement, Brady and others?

[fol. 2749] A. I cannot tell you. I remember meeting Mr. Brady and others. Just when it was or how long before this suit it was, I can't tell you.

Q. Well, let's see if we can develop one fact. Is it a fact or not that in advance of the bringing of the suit by Owens there was one or more conferences between representatives of Hartford-Fairmont, Owens Bottle Company, and Hazel-Atlas?

A. I think that is true, yes.

Q. The subject matter being generally what?

A. Generally what we were going to do. They said we were infringing their rights. What are our plans? Whether—I think the question came up whether we wanted to sell out or not.

Q. Finally nothing came of the sell-out suggestion, did it?

A. No. Nothing came out of it.

Q. When the suit on the Brook Patent was begun, who were the counsel for plaintiff?

A. Fish, Richardson & Neave, counsel for Hazel-Atlas Company.

Q. That suit ran along for a year or so in the District Court in Connecticut?

A. It may have. I could not tell you whether it was nine months or six months, or a year, but at any rate the suit was brought in Hartford in 1918.

Q. Do you recall when the decision of the District Court was?

A. No, I do not. I could not tell whether it was the latter part of '18 or the beginning of '19.

[fol. 2750] Mr. Wall: I may say to Your Honor that the record shows that the District Court decision was in February of 1919. The case was affirmed on appeal in December, same year, 262 Federal 427.

Q. After the decision of the District Court—which was in your favor, was it not?

A. It was.

Q. Did you have any further conferences with representatives of the Owens Bottle Company?

A. Well, we did of course after the Circuit Court of Appeals decided.

Q. I am speaking now of 1919, before the case had been decided by the Circuit Court of Appeals?

A. We may have, Mr. Wall.

Q. Well, see if I can fix it some other way. I think it was testified to here earlier in the case that you had some discussions of selling out to Owens Company in 1919 and then negotiations were dropped?

A. That is right.

Q. What time of the year; can you tell us that?

A. I would have said it was in the fall.

Q. Was there more than one occasion during the fall of 1919, or during the year when you conferred with the Owens people in regard to a possible sale of Hartford's assets?

A. I think there were several meetings, Mr. Wall.

Q. Did the conferences ever get to the point where a formal offer was made to you by the Owens Company?

[fol. 2751] A. Yes. The Owens Company offered us two millions of dollars, and we were asking two and one-half millions, and the negotiations ended without anything being done.

Q. In adition to the suit which we have mentioned on the Brook Patent, were there any other suits brought against you by Owens in 1919?

A. Yes. They brought a suit against J. T. & A. Hamilton Company.

Q. A lcensee of ——?

A. A licensee of ours, on the transfer mechanism which was attached to our milk bottle machine, but that suit was dropped.

Q. Do you know when or under what circumstances?

A. Simply they did not think they would go any further into it. They made up their minds they didn't have a case.

Q. Do you recall anything in connection with that suit about getting some rights under an O'Neill Transfer Patent?

A. Yes. I think we did.

Q. Do you recall what connection that had in connection with this case brought by the Owens Company on the Transfer Patent?

A. Well, I only remember this,—that when it was explained to the Owens Company what we had and how we had it covered, that they dropped the suit. In other words, they did not, as I remember it, they did not believe that they had any further claim against us because it was so clear that the transfer mechanism was covered by this [fol. 2752] O'Neill Patent and our patents.

Q. That is the same O'Neill, isn't it, who has been referred to in previous testimony here?

A. That is correct.

Q. O'Neill was an old-timer in the glass industry, I take it?

A. He was.

Q. And Ed Miller you already indicated was?

A. Yes.

Q. And William J. Miller?

A. Correct.

Q. William J. Miller is still living, is he not?

A. So far as I know. I am not sure.

Mr. Isseks: Is he still living?

Mr. Wall: If he isn't the government's subpoena has not been served.

Q. At the time when your negotiations with Owens broke down in 1919, Mr. Smith, what was the situation that you were in in regard to your patents as you understood it?

A. Oh, they were still in the Patent Office in interference.

Q. Had you gotten any of them out?

A. No.

Q. Any of the important ones?

A. None of the important ones.

Q. Had you personally given any attention to the problem of getting them out, or the necessity of getting them out?

A. Simply urging our Patent Department to do everything they could because all our licensees were complaining.

[fol. 2753] Q. Now let's turn to your financial history up until '21,—from '20 to '22. During the time you have mentioned of development and these Owens law suits and interferences, where had the money been coming from to run the business, build machines and do the work?

A. Well, for the first two or three years I was there Beech Nut Packing Company and the Monongah Glass Company kept putting in more money. Then we commenced to sell rights, patent rights across the water.

Q. Tell us about that?

A. That furnished quite a considerable amount of money. The news of this new development had spread across the water and people from many foreign countries came over here to see the feeder in operation. We sold rights eventually in seventeen different foreign countries,—Australia, Japan, Argentina, Chile, France, Germany, Belgium, Holland, Spain, Italy, Canada, Brazil, Cuba, et cetera. They would come over here and see the machines in operation and would be enormously impressed. They would say this is something we must have. That furnished additional income because we sold the rights for cash. We did no licensing and leasing across the water, but even then, with all the development work cost up to '22—1922, we were in the hole. It showed a loss of $750,000.

Q. Now the sale of foreign rights which you have referred to covered what period of time?

A. I think the sales started in 1918 and continued on.

We are still selling some foreign rights. After most of the [fol. 2754] feeder sales took place then we commenced to sell Lehr rights and forming machine rights.

The Court: Are these the sale of rights or sale of machines?

The Witness: Sale of rights, Your Honor, and we furnished complete set of blueprints with the sale so that in most cases, not every case, most cases, the purchaser would take our blueprints and have our machines made in either France or England, et cetera.

Q. You did little or no export business of machines sold from this country?

A. Very little. We have done some, but very little.

Q. What was the original capital of Hartford-Fairmont Company at the time you came in?

A. Well, at the time I came in they had invested about $120,000 up to that time, and then that went up to $433,000 I think. So then at the time the Hartford-Empire Company was formed we had $433,000 of common ou-standing. But of course that did not represent the capital invested because as the money came in either from licensees or sale of foreign rights it was put right back into the business.

Q. When did the first royalties come in?

A. The first royalty check was in December, 1917, from J. T. & A. Hamilton.

Q. Now, to get additional capital from time to time you called upon I think you said the Monongah interests and [fol. 2755] Beechnut.

A. Yes.

Q. Did there come a time when the money came hard from these gentlemen?

A. Yes.

Q. About when was that?

A. Well, money became very tight in about '19 when we undertook the development of these narrow neck machines.

Q. Who was that undertaken for, for specific licensees or part of general development?

A. General development.

Q. Did you ever have, about that time, any indication at all as to whether your financial backers would be willing to continue to furnish more money as needed, or whether they would not be?

A. Well, they were pretty worried about it, and of course not being in as close touch with the situation as we were in Hartford, they probably did not have the same amount of enthusiasm and faith as to what we could eventually accomplish, but they were worried. They failed to, or they did not realize quite as much as we did that all development work, all research work requires a lot of money and may be successful and sometimes not.

Q. Does it require much of your time to work out the problems?

A. It requires a great deal of time. I remember in Mr. Knox Smith's memorandum the other day, one of the memoranda, he states it as three years. Now I would say [fol. 2756] outside of that one outstanding example which I mentioned this morning, the milk bottle machine, that it takes five, six, seven or eight years from the time you conceive of an idea before it becomes really commercially sound.

Q. In the case of a complex mechanism or machine, according to your observation, is it the usual course for that to spring from one man's single invention or as a composite result from many?

A. Of course that varies, Mr. Wall, a great deal. A man may conceive of a fundamental idea which may be basic and patentable. Now, in carrying out that fundamental idea and putting it into creating mechanism to employ that fundamental idea, probably those working on the problem will actually have new thoughts and they will create inventions too. I don't know of anything we have today like communication, automobiles, or any of the other great things we enjoy in the electrical field, and so on down through to chemistry, that any one man has been responsible for. The original idea may start with a man like it did with Marconi, and along came DeForest who made Marconi's wireless ideas practical.

Q. Getting back to the time in 1919 when it seemed to you that your financial backers were somewhat reluctant to furnish additional funds. During that period did you arrive at any conclusion in your minds, you and your operating executives, as to whether or not it would be necessary for your future to have an alliance with either [fol. 2757] a strong glass company such as Corning or Owens, or to have financial support from some other group?

A. Well, the question of alliance with the Corning Glass Works or the Empire group, as we call them, came up and we knew they were—I don't want to be facetious—sufficiently well-heeled to contribute money if we needed it.

Q. I am calling your attention now to a paragraph on the first page, the third full paragraph of Exhibit 7 which was offered some time back, in which you purport to say, "Also told them"—meaning, I suppose, the Houghtons, Mr. Day, and Mr. Falck, whose names appear at the top of the memorandum,—"Also told them that it was quite apparent to us that we must either proceed independently on a very much larger scale than we had in the past, or else consider the desirability of entering into negotiations with the Owens' interest, banking interests, or with the Empire Machine Company's interests, and that until we have been able to form a clear and definite conception of which steps seemed best for us to take, naturally we could not arrive at a decision, and therefore asked them what their picture of the situation was, and why they believed it would be a good stroke of business for the Empire and Hartford interests to get together". At that time did you have in mind the possibility of requiring financing from outside interests, new interests?

A. Yes. The question of financing was acute at that time. If our only original backers, the Beechnut Company and [fol. 2758] the Monogah Glass Company, were not going to give us additional money working capital of course we would have been forced to go somewhere else.

Mr. Wall: If Your Honor please, the subject of profits and losses is the subject matter of Stipulation No. 7, Section 1, and in connection with this testimony I would like to refer to the figures as to profit and loss as shown by that Stipulation. It has not yet been offered, but will be at the appropriate time, and with your permission I should like to quote the figures, profits and losses from 1912 to 1922.

Mr. Isseks: Why not put the whole Stipulation in?

Mr. Wall: I have no objection to offering the entire Stipulation, but I only desire to call to Your Honor's attention at this time Stipulation No. 7, Section 1. That will be Exhibit 5002.

The Court: That is Stipulation No. 7?

Mr. Wall: Yes, Your Honor. It bears numeral 7 at the top right, and there are four sections. Mark the whole document the same exhibit, but we will offer at this moment Section 1.

The Court: It may be admitted.

Mr. Wall:

1912—Loss	$ 381.27
1913—Loss	$ 1,085.00
1914—Loss	$ 2,272.87
1915—Loss	$ 12,076.41
[fol. 2759] 1916—Loss	$109,147.54
1917—Loss	$208,953.98
1918—Profit	$ 7,691.80
1919—Profit	$ 7,042.82
1920—Loss	$200,155.48
1921—Loss	$163,836.59
1922—Loss	$ 81,658.43

Total excess of loss over the two small profits of $764,843.85 up to and including 1922.

The Court: I think you may suspend at that point. The bailiff may recess court until two o'clock.

(Noon recess.)

[fol. 2760] (At 2 o'clock p. m., Monday, March 31, 1941, the hearing was resumed.)

The Court: Proceed.

Q. Mr. Smith, along in 1919, I think the evidence shows, negotiations were begun in earnest with the Empire group, which eventually culminated in the 1922 agreements?

A. That is correct.

Q. During the course of those negotiations the subject of special glasses and glass compositions was frequently mentioned between you and the Empire group, was it?

A. Yes, as I stated before, that was one of the matters discussed.

Q. What value in these discussions did the Empire group attribute to their glasses, so far as might affect your future?

A. Well, they had the largest glass laboratories, certainly in the United States, I am not sure but what in the world, and they had a staff of chemists, physicists, and had developed for their own use, special glasses, like signal ware for the railroads and this baking ware, optical ware, and we felt, and they so stated they felt, they could develop special glass formulas which might be used in the container field, and if that was so that we could make, by the use of those glass formulas, a lighter and a stronger container for general use in the bottle and container field, or if they could develop glasses which would speed up our machines, we thought it would play a very important factor.

Q. Well, how did you foresee these glass compositions [fol. 2761] would ever become commercially important to your company?

A. Well, it stood to reason, I think, that if the Corning Glass Works were able to produce these formulas and they should sell these formulas to other people, or to one company, like the Owens Company, that our licensees would be deprived of the use of these glasses, and, of course, that, again, would directly affect the prosperity of the licensees and affect our income.

Q. Had Hartford-Fairmont done any work in glass chemistry or glass composition?

A. Not at that time.

Q. And was Hartford-Fairmont then able to undertake that kind of work?

A. No, we had no organization for it.

Q. Did you have the capital for such research at that time?

A. No, we were very poor at that time.

Q. I call your attention to the last full paragraph on page 6 of Exhibit 7, I should say it is the paragraph beginning at the bottom of page 6,—"At a low estimate I figure that if we proceed independently we shall require at least a minimum of $250,000 permanent working capital to complete our program, and this program cannot be completed in less than two years, and that it will be three to four years before we are reaping the benefits from full automatic equipment from the tank to the packing room." Now, in referring to the minimum of $250,000 for permanent working capital, did you have in mind at the time an enterprise devoted to [fol. 2762] machine development or including also glass research?

A. To machine development, I think. What is the date of that memorandum?

Q. Conference of August 2, 3 and 4, 1919.

A. No, we needed cash very badly then, because we had to build, were in the process of building, these narrowneck machines, and press and blow machines.

Q. The discussion of glass, the value of it to a licensing company licensing machines, continued for some time, did it?

A. Oh, yes.

Q. I call your attention to Exhibit 9, which has been received, bearing date of March 16, 1920, a series of points under the caption, "Hartford-Empire agreement" and in longhand, "From F. G. Smith". Glance at that, if you please, and tell me whether the discussion of the value of glasses, and what Corning had to offer to you, was still under discussion at that time.

A. (After referring to same.) Yes.

Q. Referring to the last paragraph on page 1, I will read the paragraph: "Any concern which can offer the user of automatic machinery special formulas ought to eventually control the key to the glass industry in this country and foreign countries. Non-control of the formulas might permit formulas to be licensed to manufacturers not using our machines, such manufacturers then might capture a large part of the trade of our licensees because of superior quality of glass, and thus work untold injury to us." Did that rep- [fol. 2763] resent your personal view as to the importance of the glass formulas to you at the time of this memorandum?

A. It did.

Q. I call your attention next to Exhibit 10, which has been offered and received, and comes from your files, a letter of March 17, from Honiss to you, marked "Copies to Mr. Arkell, Mr. Cunningham and Mr. H. K. Smith", and attached as part of the exhibit, a paper headed, "Questionnaire for Mr. Falck, March 17, 1920". Now, I want to call your attention to the last two paragraphs of the letter from Mr. Honiss to you: "I am enclosing herewith a questionnaire for Mr. Falck, concerning the expected uses of the new glasses. Karl E. Peiler and Edward H. Lorenz approve of the foregoing and of the questionnaire." Do you recall whether any questionnaire was given to Mr. Falck as to the uses and value of glasses which you expected to get?

A. Well, we naturally asked the Corning people, or Mr. Falck, to let us know in a more detailed way what he thought his company could actually do for us in new glass formulas, and how we would go about to evaluate that contribution.

Q. I now would like to show you the minutes of the executive committee, referring particularly to the meeting held at the Hotel Belmont, April 6, 1920, at which, according to the minutes, were present: Messrs. Arkell, Cunningham, Honiss, F. G. Smith and, by invitation, Mr. H. K. Smith. I call your attention to the paragraph beginning with the [fol. 2764] words, "Most of the discussion" on page 2. Will you read that, please?

A. (Witness complies.)

Q. By the way, who kept these minutes back in those days? Refer to the last page.

A. It is my signature.

Q. Were those minutes prepared by you or under your supervision?

A. They were prepared by me.

Q. Are you prepared to say whether at the time of this meeting a report had just been received from Mr. Falck giving ideas of what Corning would contribute?

A. It had.

Mr. Isseks: There is no dispute. If they have the report, let them mark it. We don't question it.

Mr. Wall: I would like to read the paragraph from page 2 of the minutes, to which I have just referred. "Most of the discussion of the entire executive committee centered around the proposed combination of Empire and Hartford interests. A report was submitted, which had just been received from Mr. Falck, giving their ideas, at least, of what Corning would contribute to the new merger in the way of interest to glass formulas and other developments, such as lehring and furnace construction. It was the belief of all we could not make much further progress by correspondence. It was therefore voted Mr. William H. Honiss and Mr. Dorsey have a conference covering the entire subject, believing that these two men would be able to [fol. 2765] "report back a definite and constructive plan upon which an agreement might be reached."

Q. Mr. Dorsey at that time was representing whom?

A. Corning Glass Works.

Q. And Empire, if you know?

A. Why, I think so.

Mr. Wall: I next ask to have marked as Exhibit H-5003, a copy of letter, photostatic copy of a letter dated April

3, 1920, from Alexander D. Falck to F. Goodwin Smith, which is stipulated genuine, I believe, by Hartford and the government.

I also ask to have marked as Exhibit H-5004, photostatic copy of document marked on the second page, "Data with reference to possible relations between Corning Glass Works and new company to be formed by merger, dated at Corning, N. Y., April 2, 1920."

Q. I hand you Exhibit H-5003, Mr. Smith, and ask you whether that was received in the usual course?

Mr. Isseks: I will stipulate it.

Mr. Wall: Very well. And the same question regarding Exhibit H-5004.

Mr. Isseks: I will stipulate that, too, Your Honor.

Mr. Wall: I would like to have the two read, omitting from the Exhibit 5004 the appendices, which don't need to be read, as I see it. They are both offered.

The Court: Both admitted.

(Said Exhibits H-5003 and H-5004 read by Mr. Carlisle.)

[fol. 2766] Q. Mr. Smith, eventually, of course, your representatives and the Empire group arrived at an agreement upon the essential terms of your bargain?

A. That is true.

Q. One of those was the amount of stock participation by each group in the new company, was it not?

A. That is correct.

Q. And another, the fields which would be reserved by the respective companies?

A. That is true.

Q. Now, not with regard to the details of the final contracts that were signed, but speaking only of the main principles of the contract, by what time in 1920 had those principles been agreed upon, if you can tell us?

A. I would say that they had been agreed upon by the latter part of 1920.

Mr. Wall: I think you have a copy of the next minutes I am about to ask him about, of November 17th.

Mr. Isseks: We don't question them.

Mr. Wall: No question being raised that the book I have is the minute book of the executive committee, I desire to mark as an exhibit, and also read an extract from the executive committee minutes of November 17, 1920, Defendant's Exhibit H-5005. That is offered and I desire to read the part which is transcribed.

The Court: It may be admitted. You may proceed.

Mr. Wall: (Reading.) "Meeting of the executive com- [fol. 2767] mittee of Hartford-Fairmont Company was held at the Hotel Belmont, New York City, on November 17, 1920. Present: Messrs. Arkell, Cunningham, Honiss, F. G. Smith, by invitation H. K. Smith and H. L. Heintzelman. Mr. Arkell and Mr. F. G. Smith made a report concerning conference which they had with Messrs. Houghton and Falck at Corning and Elmira, on Thursday, November 11th and Friday, November 12th, relative to the financing of the Hartford-Empire Company for the next twelve months to come.

The budget submitted and discussed between the Empire group and the Hartford group showed approximately a possible required maximum of $400,000 for the next six months. The Empire group agreed to finance their share, which is 45% of this amount, and the Beechnut Packing Company and the Monongah Glass Company agreed to finance their share, and if absolutely necessary they agreed to finance whatever amounts could not be handled by stockholders of the Hartford-Fairmont located in Hartford."

And the last paragraph of the minutes:

"It was definitely assumed that the merger of the Empire and Hartford Companies was an assured fact and that the active reorganization and combination would be put into effect as soon as the lawyers, Herbert Knox Smith and Mr. Sayles, could draw the necessary legal documents. Respectfully submitted, F. G. Smith, General Manager."

Q. Mr. Smith, you refer there to the Hartford-Empire Company. That Company, of course, wasn't in business at [fol. 2768] — time, was it?

A. No, but we had come to an agreement that would be the name of the new company.

Q. There is a reference here to financing for the next six months, and that the Empire group agreed to finance their share, which was 45% of this amount. Was 45% the proportion of the stock of the Hartford-Empire Company which was originally issued to them?

A. Yes, we were to have 55% of the new company and they were to have 45%.

Q. Did they finance the 45% of the requirements which are referred to here?

A. Yes. Yes, I definitely remember that meeting, because it was the first time I had been in Mr. Houghton's house.

Q. This I am referring to now is a meeting of the executive committee. I am referring to the minutes of the executive committee.

A. The Empire group did put up 45% and the Hartford group put up 55%. We didn't need the money all at once, but we called for it in 1921 and the amounts were furnished, up to $361,000, the Empire group furnishing 45% and the Hartford group 55%.

Q. Can you tell about when, during the year 1921, these installments were paid in?

A. Well, I think they covered several periods. I think we first asked for the money about the early part of '21, perhaps February or March,—I can't tell you just when, Mr. Wall, and from then on right along.

[fol. 2769] Q. I call your attention to the last paragraph, "It was definitely assumed the merger of the Empire and Hartford Companies was an assured fact." Was that your understanding at the time?

A. It was.

Q. "And that the active reorganization and combination would be put into effect as soon as the lawyers could draw the proper and necessary legal documents." Was that your understanding?

A. It was.

Q. Did Mr. Herbert Knox Smith and Mr. Sayles proceed some time after that to draw some papers?

A. Yes, and they worked on those papers from then on running through '21, even into '22. They were very complicated papers to draw. First of all, the technical definition——

Q. Of what?

A. Of the fields of ware, and various other considerations throughout the contract, machine rights passing back and forth, and I cannot tell you how much work was done on that, but off and on, as Mr. Herbert Smith had time to consult with others, and as Mr. Falck had time to consider it, they were very long drawn out.

Q. So you are not blaming Mr. Sayles for that delay, are you?

A. No, I don't think you can blame Mr. Sayles.

Q. Now, see if we have it correctly: by the end of 1921, say late in the year, at that time it had been definitely [fol. 2770] assumed for a year that the merger was an assured fact—the latter part of 1920 and by 1921 I am speaking of—for a year that had been the assured fact?

A. It had.

Q. Had anything occurred to change your mind about that?

A. Not with going ahead.

Q. And the proportions of stock interests, were they still the same as they had been at the time of the executive committee meeting of 1920?

A. Yes, they were; it was 55 and 45; and then the agreement was to put 10% of the total in the treasury for employees.

Q. You actually had some amount of money from the Empire people, is that right?

A. Yes, we collected income, bulb income. The machine which they had developed,—the Empire had developed,—was called the Canfield machine, it was a paste mold machine, and that was fed by the Hartford paddle needle feeder, and we received considerable income each year, the royalties on bulbs running from 80 to 100,000 dollars, to even more in some years.

Q. And the drafting of the contracts, at least intermittently, was under way?

A. That is correct.

Q. Now, by the way, was there any connection at all between this agreement with Empire and Corning, eventually signed up in 1922, and the agreement which was later arrived at with Owens?

[fol. 2771] A. Oh, no, two entirely separate companies.

Q. Were the 1922 agreements with Empire and Corning in any way contingent upon the result of any negotiations with Owens?

A. Not at all.

Q. What was the reason, in brief, for signing the 1922 agreement,—your reasons, not the Empire group?

A. Well, we thought we had obtained very valuable glass rights from them; we knew they would be quite able to help us financially; and it just seemed that the two groups together could accomplish much more than each group working separately. And, of course, at that time, as I testified this morning, our financial situation was pretty critical, and here was the Corning Glass Works, who had a great reputation, we felt would be able to give us—be of great value to us, and that the two companies, working together in such a merger, would get along faster and better than working separately.

Q. Was there any change in your royalty income as the result of these agreements of 1922?

A. Yes, we received the bulb royalties.

Q. Do you know about how much that amounted to per annum?

A. I would say about 80 to $100,000 a year, sometimes more.

Q. By the way, Mr. Smith, what new glasses or glass compositions did you get from Empire or from the Corning group after this agreement, or before, for that matter?

A. Well, very few. They did undertake for us the development of a glass for Beechnut jars, so that the jars [fol. 2772] could be made of much lighter weight, and have the same tensile strength; and they did quite a little work on that. A glass formula was presented covering that problem. The trouble with it was it was too expensive, so that although you made a better jar and a stronger jar, the batch, or the ingredients that went into the glass batch, cost too much money.

Q. So was that used or was it not?

A. No, it was never used.

Q. Did you get any other special glasses or glass formula which you did put to use?

A. I don't remember any.

Q. I asked you this morning about some negotiations with the Owens Company in 1919, you recall, do you not?

A. Yes.

Q. You were asked earlier in your testimony by counsel for the government as to when negotiations were resumed with the Owens Company after the breakdown of the 1919 negotiations. Do you recall now?

A. I think they started up in '21 again, with the issuance of the Lott Patent.

Q. What time of the year, do you remember, early or late in 1921, did your first conference occur with the Owens people?

A. Well, I don't remember exactly, Mr. Wall, I would say around the middle of the year, May or June,— something like that.

[fol. 2773] Q. I call your attention to Exhibit No. 22, which has been offered by the government, dated November 10, 1921, purporting to recount a conference with a Mr. Bartlett, at the Belmont Hotel, and later with Mr. Ashcraft. Do you recall whether or not Mr. Ashcraft had anything to do with the resumption of negotiations in 1921?

A. I remember we did meet Mr. Ashcraft, I think I testified last week to that effect several times—and he was very anxious that something be done about the situation between ourselves and Owens, because he was a licensee of Hartford's and used our equipment. His company the Illinois Glass Company was also a licensee of Owens, and the Lott Patent had issued. I think shortly after the issuance of that patent, people were served with notice of infringement. I think, naturally, Mr. Ashcraft wanted to find out where his company stood. It was between two fires.

Q. You said he was a licensee: you referred, I suppose, to the Illinois Glass Company?

A. Yes, sir.

Q. What is the fact as to whether it was after his contact with you on the subject that negotiations began with the Owens representatives?

A. I think they did, Mr. Wall.

Q. Assuming that the meeting was as shown in Exhibit No. 22; there was a meeting with Mr. Bartlett at the Belmont, and then with Mr. Ashcraft later; can you fix [fol. 2774] the approximate time when negotiations then began with the Owens Company?

A. No. I will merely say, shortly after that.

Q. I call your attention to Exhibit No. 23, which has been offered and received in evidence, headed "Memorandum of Interview between representatives of Owens and Hartford-Fairmont Companies", dated December 16, 1921. Are you able to say whether or not that was somewhere around the time you began negotiating again with Owens?

A. I would think so.

Q. You mentioned that some Lott patents had been issued before that?

A. Yes, sir.

Q. Do you recall anything about Owens becoming an owner either of some Brookfield patents or patent rights under them?

A. They obtained rights under the Brookfield patents.

Q. Do you associate the acquisition of those rights with any particular time?

A. I think it was some time after the Lott Patent issued. I am not dead sure.

Q. Now, by the date of these two exhibits which I have shown you, Exhibits Nos. 22 and 23, in November and December, 1921, as I understand it the essential points of your negotiations with the Empire group were completed?

A. Oh, yes.

Q. And negotiations then or thereabouts began with the Owens people?

[fol. 2775] A. Yes, sir.

Q. There have been various exhibits introduced here, Mr. Smith; I do not want to go over all of them; but is it correct to say that there were numerous meetings from time to time in 1921, say to the middle of 1922, between Hartford-Fairmont representatives and Owens?

A. There certainly were several meetings.

Q. Is it correct to say that in the latter part of 1922, and, more particularly, in 1923, that meetings occurred between representatives of the two companies?

A. Yes, I think that is true.

Q. Culminating in 1924 in that April 9 agreement which has been put into evidence?

A. I think at one point there the negotiations were broken completely off, when Mr. Knox Smith's memorandum showed that we had sent a proposition to the Owens Company and had never had a reply.

Q. Go ahead.

A. And we considered that as final. Then they were opened up again about the time, either right after, or even before, Owens filed suit against us, against a licensee, under the Lott and Brookfield patents.

Q. There were two such suits, were there not?

A. Yes, sir.

Q. Do you remember one by Owens itself, on the Lott patents?

A. Oh, yes.

Q. And one by Owens and Hazel-Atlas on the Brookfield patents?

[fol. 2776] A. I think under the Brookfield, both Owens and Hazel were parties to the suit.

Mr. Wall: This, I think, also is stipulated. I believe it is stipulated. I am not sure.

Mr. Isseks: I will take it as a statement.

Q. June 6, 1923, both suits were begun against the Hamilton Company, was it?

A. Hamilton, a Pittsburgh licensee.

Q. One of your original licensees?

A. Yes, sir.

Q. That was in Pittsburgh, was it not?

A. Yes, sir.

Q. Giving only a general picture, these series of meetings were broken off, and a new series of meetings begun, and there were various plans suggested, were there not, from time to time?

A. Oh, yes.

Q. A holding company?

A. Yes, sir.

Q. A guaranteed income plan, so-called?

A. Yes, sir.

Q. And other plans, perhaps?

A. There must have been.

Q. And the net result, up until the spring of 1923, was what—had you reached any agreement or not?

A. No, I don't think we came to a final agreement until early 1924.

[fol. 2777] Q. These suits that we have just mentioned were begun in June of 1923. After that did someone conduct negotiations for your company with Owens, some outside lawyer?

A. After what date?

Q. After June of 1923, when the suits were on file?

A. Probably I think the record shows that Mr. Ashcraft again entered the picture.

Q. I am speaking of a representative of your company?

A. Mr. Bartlett was our head patent attorney at that time.

Q. Do you remember Mr. Dorsey in the picture at all at that time?

A. Yes, Mr. Dorsey had something to do with the negotiations.

Q. What was his participation in the negotiations?

A. I cannot tell you exactly, unless he discussed the patent angle with representatives of the Owens Company.

Q. Do you recall his having any contact with Mr. C. B. Belknap with regard to the working out of a plan?

A. Yes, I think he had a number of conferences with Mr. Belknap.

Q. And a conference which he had for you in Toledo with, I believe, Mr. Blair, of the Owens Bottle Company? Do you remember of the occasion?

A. That might be so. I do not happen to remember the occasion.

Q. Do you remember anything about the progress of either of those lawsuits which Owens had against you, whether they were coming on for trial or not in the spring of 1924?

[fol. 2778] A. Early in 1924 certainly we had come to what you might call an impasse. Owens had stated to us what they insisted upon, and it came to a situation where, baldly, we could either take it or leave it; and if we did not accept those terms, if those terms were not agreeable, the date for trial was set right away.

Q. I call your attention to Exhibit No. 52, which was offered by the government, being a letter from Mr. Dorsey, addressed to you, under date of January 21, 1924, which I think was received in the regular course of business. You may look at it sufficiently to see whether you recall the letter. Then I want to direct your attention to the last sentence on the last page of the letter.

A. Yes, Mr. Wall, I remember that.

Q. The last sentence is: "There is much in it that is distasteful to me"—referring to his proposal from Mr. Blair, was it not?

A. That is right.

Q. "But face to face with an ultimatum, as I sincerely believe this to be, a feeling of responsibility forces me to volunteer my recommendations as above". Did you understand, upon receiving that letter, that you had in effect received an ultimatum from the Owens Company?

A. I think so; and I think later on, possibly at a few other meetings, we were left with no doubt but what it was an ultimatum.

Q. Some time after receiving that letter did you take up the matter with your patent counsel as to what your prospects were in these lawsuits with Owens, and what disposition should be made of the controversy?

[fol. 2779]

A. Yes, I consulted with Mr. Bartlett, a general patent attorney in New York City.

Q. What was his advice to you?

A. His advice was simply this: he said, "Goodwin, the toll seems to be pretty high; but if you go to trial and you lose your case, you have nothing left; not only that, your licensees may or may not be able to continue." We had then in our contracts,—and still do—a clause which saves the licensee harmless from infringement suits up to an amount in royalties which they paid to us during the two preceding years. Mr. Bartlett simply said that in a patent suit of this kind you could never foretell what they would say, what the Court's opinion would be; but in general the effect was that a half a loaf was better than no loaf at all; and we felt we should not run the risk of going through that litigation.

Q. You referred to some later conferences in your answer recently which you had after receiving Mr. Dorsey's letter?

A. Well, I don't remember any particular one; but I know that a letter from Mr. Dorsey did not end it.

Q. I call your attention to Exhibit No. 54, which has been received, and which purports to show—which is headed: "Memorandum in re Owens agreement March 18 and 19, 1924." I don't know whether you have any recollection of the particular meeting or memo. If you do, you may tell us, [fol. 2780] and, if not, I want to ask one or two questions anyway about it.

A. No, I do not remember the particular memorandum.

Q. Do you remember that there was any meeting after the date of the Dorsey letter, to which I have referred?

A. Yes, I think perhaps two or three meetings.

Q. At any rate, at some time or other, about that time in 1924, did you come to a point where it was necessary to make some final decision upon the question of agreement, and the disposition of the suits?

A. Oh, yes.

Mr. Wall: I should like at this time to have marked as Exhibit No. 5006, a photostat of a longhand memorandum, consisting of six pages.

Q. Mr. Smith, I hand you Exhibit H-5006, and ask you to look that over and tell us in whose handwriting that is, if you know?

A. It is my handwriting.

Q. I call your attention to a lead pencil mark at the top of the first page: "March, 1924?" I take it that is not the same handwriting, is it?

A. No, it is not.

Q. Do you know how that was placed there?

A. No, I do not.

Mr. Isseks: I will stipulate that the witness wrote it prior to the execution of the April 9, 1924, contract.

Q. Do you have any recollection as to how long before [fol. 2781] the execution of that contract you wrote those notes?

A. No, but it could not have been very long. The contract was executed in April, as I remember, was it not?

Q. As of April 9.

A. 9th; and this was probably done not long before the contract was executed.

Mr. Wall: If Your Honor please, I offer this in evidence. It is Exhibit No. 5006. I should like to have it read to Your Honor.

The Court: It may be admitted.

Thereupon, Exhibit No. 5006 was read to the Court by Mr. Goodrich, of counsel for defendant, Hartford-Empire Company.

Q. Mr. Smith, I call your attention to the statement on one of the pages—No. 2: "Our attorneys have not much enthusiasm over the case, except Honiss. Byrnes says it is very complicated and their general attitude is we hope to God we won't have to try it." Had you consulted with Mr. Byrnes shortly before you decided to make these arrangements with Owens?

A. I did not, personally, but perhaps our attorneys had consulted with him.

Q. Had his attitude come to your attention in settling the problems you had before you?

A. Probably it was reported to me.

Q. Byrnes was a Pittsburgh lawyer?

A. Yes, sir.

Q. A partner of Mr. Parmelee?

A. Yes, sir; and on forming machines, a patent attorney [fol. 2782] for Whitall-Tatum.

Q. What is this reference to the chewing gum and the bacon?

A. Well, when the Beech Nut Packing Company started their business, for many years they were famous for their bacon. The cost of hogs kept going up so that their profits on their bacon kept going down, down, down. But then they went into the chewing gum business and found that very profitable; so chewing gum saved their bacon.

(Afternoon recess.)

The Court: Proceed.

Q. Mr. Smith, in this Exhibit No. 5006, I find a reference to eleven free units, and also to forty free units, and the question as to which you would prefer to have Owens receive?

Those free units consisted of a feeder and a forming machine, did they?

A. They did.

Q. What number, if you remember, eventually did go to Owens?

A. Forty.

Q. I call your attention to a statement at the top of the last page, after that chewing-gum bacon episode: "But it is a case of where a guarantee saves our dividends." What dividends had Hartford-Fairmont or Hartford-Empire paid at the time you wrote this memorandum?

A. None whatever.

Q. You had been in business for how long?

A. 1912; we had been at it twelve years.

[fol. 2783] Q. Do you recall whether there were interferences between yourself and Lott or other Owens inventors in the patent office at this time?

A. Yes, still a lot of interferences.

Q. How long had there been such interferences?

A. I think those interferences, a lot of them started in 1918, 1919, 1920. I am not sure. The first interference started in 1916, of course.

Q. As a matter of fact, Mr. Smith, Lott was in interference with some of your applications of an early date, was he not?

A. You are talking about the one that issued?

Q. Yes.

A. Yes, sir.

Q. Had there been at one time any negotiations between your company and Lott, looking to the purchase of his applications?

A. Yes, I think Mr. Dorsey had some negotiations with Lott.

Q. Can you fix the time, approximately?

A. No, I cannot.

Q. Was it, if you now recall, earlier than 1920, or later?

A. I think it was earlier because shortly after we could not make a deal with Lott, the Owens Company went in and bought the Lott applications.

Q. What was the reason the Hartford-Fairmont did not buy those applications?

[fol. 2784] A. The price was too high.

Q. What was the price being asked, if you remember?

Mr. Isseks: Does counsel know? If counsel knows, I will stipulate it.

Mr. Wall: My best information is that $150,000 was being asked by Lott.

The Witness: I was going to say it was over $150,000.

Mr. Wall: Hartford thought it too high, and Owens bought the Lott applications.

Q. You had had a total of four suits brought against you by Owens, had you not?

A. We had the original under the Brook Patent. Then we had a transfer suit. Then we had this Lott suit, and the Brookfield suit.

Q. Had there been any time, if you recall, between 1917 and March of 1924 at which your company was not in litigation with the Owens Company, either in the courts or in the patent office, or both?

A. No, I think that is true.

Q. Your own patents on the plunger and on the heated hood, and the other inventions of your own engineers: had they come to issue yet?

A. They had not.

Q. What were the reasons, Mr. Smith, in 1924, you decided that it would be best to make the arrangement with Owens which was finally consummated in the April 9 agreement?

A. I thought I explained just before the close of this session. Here we had been sued by the Owens Company. [fol. 2785] Nobody was sure which way that suit would go. If we lost it, we were in great difficulty. Nobody wanted to guarantee that we would win it. Although I did not like the terms of the agreement—I thought they were too severe—we went ahead and I recommended it to my Board because I thought that we were buying an insurance policy of being allowed to live, carry on, create.

Q. One of the provisions of the agreement was what we referred to as Section 22?

A. That is correct.

Q. You remember the provision as to licensing?

A. Yes, we could not license under their patents without their consent.

Q. Did that section originate with you or with Owen?

A. With Owens.

Q. Was that satisfactory to you?

A. No, sir.

Q. Your agreement with Owens, as we have stated, was signed as of April 9, 1924?

A. 1924, that is correct.

Q. Then amended as shown by the evidence here already?

A. That is correct.

Q. Mr. William J. Miller has been referred to here as a manufacturer and supplier of feeders, do you recall?

A. He was.

Q. Do you recall when the Miller feeder came on to the market, with reference to your own paddle or paddle needle feeder?

A. I would think around 1918 or 1919, but I am not sure. [fol. 2786] It was very early.

Q. How about the Tucker, Reeves & Beatty feeders?

A. That was about the same time, I would think.

Q. In regard to Miller, were you in interference with him also in the patent office?

A. Yes, sir.

Q. How long did that continue?

A. That continued until we purchased Miller.

Q. Did he have an attorney in Pittsburgh by the name of Lawrence?

A. That is correct.

Q. Do you know Mr. Lawrence?

A. I met him several times.

Q. Did Mr. Dorsey, representing your company, have any negotiations with Mr. Lawrence, do you know?

A. Oh, yes, I think so.

Q. For what purpose?

A. To discuss these interference situations.

Mr. Wall: Will you mark this as your next exhibit?

The Clerk: No. 5007.

Mr. Wall: The date of it?

The Clerk: October 15, 1924.

Mr. Wall: The date is October 15, 1924, from Mr. Dorsey to Mr. F. G. Smith; Exhibit H-5007. This being stipulated, Your Honor, I offer it without further proof.

The Court: It may be admitted.

[fol. 2787] Thereupon, Exhibit H-5007 was read to the Court by Mr. Carlisle, of counsel for Hartford-Empire Company.

Q. Now, we heard something about Tucker, Reeves & Beatty feeders. Were you in interference with them in the patent office?

A. We were.

Q. How long did those interferences continue?

A. Many years. Up to the time we bought them.

Q. Do you remember the occasion of taking testimony during the time of those interferences?

A. I remember a great deal of testimony was taken, Mr. Wall.

Q. Have you any recollection of where and by whom, and the general extent and volume of it?

A. Well, I can't tell you just where. I know they covered a long period, and testimony went on for weeks at a time. Mr. Corbett was handling the Tucker, Reeves & Beatty, representing them as their patent attorney. Mr. Dorsey and Colonel Brown, I am not sure about Mr. Honiss, it seemed to me from the reports and the bills that we paid as if they were interminable.

Q. As a matter of fact, do you know whether the taking of testimony ever was completed on all those interferences?

A. No. I would not know, Mr. Wall.

Q. What, as you understood it, were the tactics of Tucker, Reeves & Beatty and their counsel in the interference proceeding; I mean did they have an attitude of [fol. 2788] speeding it up or prolonging the issue?

A. I think as a general attitude they were fighters and tried to prolong or retard. I could not tell you anything about the details.

Q. Your own state of mind and opinion is all I wanted on that, Mr. Smith. What would you say as to Miller and his tactics as you understood them to be in those interferences?

A. I think the word delay would cover it in general.

Q. Those interferences ran along, I think you said until the purchase of the patents or the patent applications from Tucker, Reeves & Beatty and Miller?

A. I think so, Mr. Wall.

Q. And that, according to the exhibits that were introduced occurred in 1925, did it not?

A. That is correct.

Q. I will call your attention, Mr. Smith, to Exhibit No. 74, which was offered by the government. You don't need to read it all over. Just look at it to such an extent that you know in general what is in it. You refer in this memorandum or document to some patent factors and patent problems. Do you recall that?

A. Yes.

Q. Did you yourself make a study of the patents, or did you get the information from others?

A. I always got the information from my attorneys. I knew nothing about patents. I knew nothing about general law or practices in the Patent Office. As a matter of [fol. 2789] fact, it is a terrible admission to make, but I don't think I ever read a patent.

Q. When you say your patent counsel, to whom do you refer?

A. Well, not only to my associate, members of our organization, but also outside patent counsel.

Q. Was Colonel Brown with the company in 1925?

A. Yes. I think he was.

Q. Did you take counsel occasionally from the engineers of your company on patent matters?

A. I don't know as I consulted them. Sometimes I received what you might call more or less of a joint report, but when certain patent matters would come up and reach any stage that it became very important, then I would ask for a report from patent counsel.

Mr. Wall: I would like to have marked as an exhibit at this time, as Exhibit H-5008, memo to F. G. Smith, dated June 26th, 1925, re Tucker & Reeves, consisting of six pages.

As Exhibit H-5009, a memorandum of July 6th, 1925, to F. G. Smith, re Tucker & Reeves, consisting of two pages.

And a memorandum dated July 6th, as Exhibit H-5010, memorandum to Mr. F. G. Smith, re Miller.

These three documents are stipulated genuine, and I suppose you say the signatures on 5008 are those of Honiss, Dorsey & Brown?

A. Correct.

[fol. 2790] Q. And the signatures on 5009?

A. Honiss, Dorsey and Brown.

Q. And on 5010?

A. Mr. Brown.

Mr. Wall: These are stipulated as genuine documents, and I therefore offer them separately in evidence at this time.

The Court: They may be admitted.

(Mr. Goodrich reads Exhibit H-5008.)
(Mr. Carlisle reads Exhibit H-5009.)
(Mr. Goodrich reads Exhibit H-5010.)

Q. The Flaming Cup Feeder of Tucker, Reeves and Beatty was a different sort of animal than their plunger feeder, wasn't it?

A. Yes.

Q. Which of those two feeders had the widest range of application or use?

A. Plunger Feeder.

Q. What kind of ware, as you understood it, was the Flaming Cup good for without a plunger attachment?

A. Pressed ware. That its greatest use was for pressed ware up to certain weights.

Q. Can you give us some idea of the weight?

A. No. I think Mr. Beatty once told me 12 ounces, 16 ounces, something of that sort.

Q. Was that your best information on the subject?

A. Well, I only know in general.

Q. Well, that is all I want.

[fol. 2791] A. That Tucker, Reeves & Beatty Flaming Cup Feeder was more adaptable for pressed ware than any other type of ware. When they started to use that feeder in the general container field they put the plunger in.

Q. What was the reason for that as you understood it?

A. I don't think the Flaming Cup feeder had the ability to shape the gob or form it to the outline of the mold.

Q. Did those flaming cup feeders have any use without the plunger after the purchase of T. & R.?

A. No. I don't know about the Federal Company itself, but I would say most of the Tucker, Reeves & Beatty attached the plunger even before we bought it.

Q. Can you sum up briefly the reasons which led you and your company to purchase the T. R. & B. and the Miller applications and patents if there were issued patents in 1925?

A. Well, I think the greatest reason, the most outstanding reason we made that purchase was to relieve the congestion in the patent office so that our own applications covering our own original invention would come to issue in patent form.

Q. Following the purchase of these two sets of applications or patents, was your so-called phase change patent issued?

A. Yes, issued I think in 1926.

Q. And following that, a year or so later, was there another patent called the plunger patent?

A. Peiler Plunger Patent.

Q. Was that the patent referred to as being in suit [fol. 2792] against the Hazel-Atlas Company?

A. That is correct.

Q. Both the phase change and the plunger patent were the result of whose labors and inventive work?

A. Mr. Peiler.

Q. The same Mr. Peiler who was with Lorenz and Honiss in the early days?

A. That is correct.

Q. In the case of Tucker, Reeves & Beatty there were some licenses outstanding also, were there not?

A. Yes.

Q. Producing royalties regularly, were they?

A. Yes. They had a very nice little income each year.

Q. Was that any factor at all in the determination of the price that you could afford to pay for the Tucker, Reeces & Beatty business?

A. It was.

Q. And that price——?

A. A million and six hundred thousand dollars.

Q. Contributed equally by yourself and the Owens Company?

A. And the Owens Company.

Q. Was that paid out in some time——?

A. I think that paid itself out in about eight years.

Q. Now I want to shift to another company, and incident, and to another time, Mr. Smith. There has been mention here of Heintzelman and Cunningham and their company, the Monongah Glass Company?

[fol. 2793] A. Yes.

Q. What position did Mr. Heintzelman have with that company?

A. He was president.

Q. And manager, was he?

A. Yes.

Q. Apparently in charge of the business, as you understood it?

A. Yes. He had a very valuable assistant, Mr. Robert T. Cunningham, who I think acted as treasurer, if not assistant treasurer, and helped Mr. Heintzelman.

[fol. 2794] Q. Do you know who the financial interests were in that company; that is, were they Heintzelman and Cunningham, and others—who were they?

A. I think Mr. Heintzelman, Mr. Cunningham, and I think there were a number of other people owned stock. They had a preferred issue. Part of the preferred issue was owned by the Beechnut Packing Company. I couldn't tell you much about the individual stock holdings, Mr. Wall.

Q. That was what I wanted, the general picture. Mr. Heintzelman was a member of the Hartford-Empire Board of Directors for sometime, was he not?

A. He was.

Mr. Wall: I might say to Your Honor that the list which I have had prepared and which counsel for both the government and myself have used occasionally, shows Mr. Heintzelman a director until his resignation on May 4, 1926.

Q. There came a time, did there, when Mr. I. J. Collins and some associates bought the stock of the Monongah Company?

A. Well, they bought some stock in the Monongah Company.

Q. Some, or all; you are not sure which?

A. No, I am not quite sure.

Q. Do you know about when that was?

A. Well, we had this in the record the other day.

Q. Do you place it with reference to the time when Heintzelman ceased being a director of the Hartford-Empire Company?

A. Well, it was the time the Monongah Glass Company [fol. 2795] had become financially embarrassed and at that time, of course, it was very disturbing to us, because here, when the company started its whole development in 1912, together with the Beech-Nut Packing Company, and the engineers in Hartford, the Beech-Nut Packing Company owned some of the stock of Monongah Glass Company, certainly some of the preferred, and here was a Mr. Heintzelman that sat on our Board, had been a very valuable member on the Board of the Hartford-Fairmont Company, but they expanded their business too rapidly and got in a great deal of financial trouble; they had to have a bond issue. They owed the Hartford-Fairmont Company a large sum of money. They owed the Box Company.

Q. What Box Company?

A. The Beech-Nut Packing Company ran a paper box company in Fairmont, W. Va., still do, I think, and made the cartons, the paper cartons, in which the glass jars were shipped. And I know there were a number of meetings between Mr. Heintzelman and Beech-Nut interests to see if some plan could not possibly be worked out to save them, but the answer was that it would just cost too much money, take too much money to rehabilitate the company, and we felt very badly about it. At the time Mr. Collins and associates bought some of the stock,—I don't know how much,—when they were first in their financial distress, we were rather pleased about that because Mr. Collins always has been considered a very able merchandiser of ware, Mr. Heintzelman had been successful in operating [fol. 2796] a small business; but then as he branched out and grew too fast, it was just a little too much for him.

Q. Did I understand you to say that Beech-Nut Company had an interest, financially, in the Monongah Company?

A. Certainly preferred stock, whether they owned any of the common I don't know.

Q. And Monongah, I think you have already said, was a source of supply for jars for Beech-Nut?

A. For Beechnut Packing Company. That was an additional reason for doing everything we possibly could to save the Monongah Glass Company.

Q. And both the Beech-Nut interests and the Monongah interests were heavy shareholders of the Hartford-Empire, were they?

A. Yes, they had the original third,—Monongah, each had a third.

Q. Do you recall when Mr. I. J. Collins became a member of the Hartford-Empire Board?

A. Well, it was at the time when the Monongah Glass Company had to sell the stock of the Hartford-Empire Company which they owned. We went through this last week. The stock was offered, because it had a pre-emption agreement, offered to the Hartford interests. Some of it was taken up, a small amount, by the Hartford interests, none by the Empire interests, and the the stock was sold by the Monongah Glass Company to Mr. Collins and his associates, and that helped the Monongah Glass Company [fol. 2797] to reduce or make a large payment on their bond issue.

Q. Do you recall Mr. Collins' succeeding Mr. Heintzelman upon your Board?

A. Oh, yes, I think he did.

Q. And upon the resignation of Mr. Heintzelman, Mr. Collins came on the Board?

A. Collins came on the Board.

Q. Were you aware that at some time Collins and associates turned over the Monongah stock which they acquired, to the Turner Company?

A. Yes, I think the testimony, or the papers, last week, or the week before, or the week before that——

Q. Or the week before that?

A. Or before that—showed the Turner Glass Company acquired the stock of the Monongah Glass Company.

Q. What interest, if you know, did Collins and his associates continue to have in the Turner Company after that turning over of the stock to Turner?

A. I don't know, Mr. Wall.

Q. Do you remember whether your understanding at the time was that they had any interest in Turner?

A. I couldn't tell you. I have forgotten just what the situation was.

Q. How about the Thatcher Company, or Mandeville personally; do you know whether he or the company had any interest in the Turner Company?

A. I am not quite sure. I think probably Mr. Collins and his associates, or Thatcher, had something to do with a [fol. 2798] preferred issue of stock of the Turner Glass Company, but just how, or what, or how much, I do not know.

Q. There was a receivership, as has been mentioned, of the Turner Company, was there not?

A. That is correct.

Q. In 1930?

A. That is correct.

Q. I think we have not yet a clear statement from you as to your recollection of whether there was an actual receivership of Monongah. Do you remember that?

A. I think I intimated in my testimony here whenever the question came up, that there was a receivership, but such is not the fact.

Q. What was the course of events with Monongah in 1930 and '31, as you recall it?

A. Well, I think they ran—there was a bondholders' committee that had something to do with the situation, but I am not very clear on that, Mr. Wall.

Q. Did you ever get your equipment back from Monongah?

A. No, we never did take it back. When they finally stopped operating, I think that a good deal of that equipment was shipped up to the Turner plant.

Q. Did Turner Company owe you any amount of money for royalties at the time of the receivership?

A. Oh, yes, very large amount.

Q. Did you realize all of what was due to you in the receivership?

A. No, but we realized a very substantial portion of it.

[fols. 2799-2800] Q. When you speak of a large amount being owed to you, about how much, do you recall?

A. As I remember it, it was somewhere around $100,000.

Q. Did Monongah, in 1930 or '31, owe Hartford-Empire royalties?

A. Yes, Monongah owed us around $120,000 or $130,000, which we crossed off as a bad account.

Q. Did you ever get it from Monongah?

A. No.

The Court: You may suspend at that point. The bailiff may recess court until 10 o'clock tomorrow morning.

(Recess taken until following day.)

* * * * * * *

[fol. 2801] Q. On page 1566 there is a statement about the proportion of Hartford-Empire stock which was owned by Monongah and Beech-Nut. Your answer was: "They had the original third—Monongah, each had a third." Now, did you mean one-third of the entire common stock or one-third of the stock which the Hartford-Fairmont group got in that new enterprise?

A. Well, that $433,000, the capital, invected capital, Monongah Glass Company owned a third of that, and Beech-Nut Company owned a third of that, and the rest was divided up amongst the Hartford engineers and Hartford group.

Q. So that in 1925 it was not the fact that Monongah owned one-third of all the outstanding stock of Hartford-Empire?

A. No, no; at that time they owned a third of 55%.

Q. And the same would be true of the Beech-Nut at that time?

A. Yes.

* * * * * * *

[fol. 2802] Q. There is a statement in the record, page 668, to the effect some milk bottle licensee of Hartford-Empire had a territorial restriction. Is that correct?

A. No, I don't remember any such territorial restriction.

Q. Do you recall the case of Hamilton Company in Pittsburgh, and what the situation has been in regard to that, up until recently?

A. Well, the Hamilton Company had a sub-license from the Thatcher Company.

Q. Is that what you were referring to in regard to the territorial restriction?

A. Well, if there was a territorial limitation in the license from Thatcher, the sub-license to the Hamilton Company, that is the only territorial restriction that existed, and I am not dead-sure whether that existed or how long it did.

Mr. Wall: I ask to have marked as Exhibit H-5011, photostatic copy of a letter from Herbert Knox Smith to H. C. Mandeville, dated April 26, 1928.

Mr. Isseks: Have we got it?

Mr. Wall: That is, I think, a stipulated document.

Before offering this, I should like to call Your Honor's attention to Exhibit 241 offered by the government, which is undated except for the lead-pencil notation at the top, "4-20-28 approx."—an abbreviation for approximately—which was a letter addressed to F. Goodwin Smith by H. C. Mandeville, on the letterhead of Thatcher Manufacturing Co.

[fol. 2803] I now offer Exhibit H-5011, which I take it is a reply to Exhibit 241.

The Court: It may be admitted.

Mr. Wall: Before having it read, I might, not by way of paraphrasing the letter but merely by way of identifying it, call attention to the fact it was a letter referring to continual pressure against sales- and price-cutting, and about royalties.

(Defendant's Exhibit H-5011 read by Mr. Carlisle.)

Q. Mr. Smith, are Hartford-Empire milk bottle forming machines in use at the Thatcher plant?

A. They are.

Q. And have been for many years, have they not?

A. Yes.

Q. What type of machines are they, or what name do you give them?

A. Well, there is the old Hartford press and blow milk machine.

Q. How long since you furnished those machines to Thatcher?

A. Oh, we haven't built any of those machines for some, it must be 16 or 17 years.

Q. Now, do you have other milk bottle licensees?

A. Yes.

Q. And do you know what forming machines any of those licensees use for milk bottles?

A. I think they use the Miller press and blow machine.

Q. Now, referring to your other licensees over the period since you have been dealing with Thatcher, what other milk [fol. 2804] bottle licensees have you had, if you can remember?

A. We have had the Buck Glass Company, Universal Company, the Lamb Company, the Owens Company, the Hazel Company, the Liberty Glass and the Florida Glass.

Q. Buck had a limited license at one time, did it not?

A. That is true.

Q. How about Lamb?

A. Lamb was, if I remember correctly, was limited to a tonnage rather than a grossage.

Q. Did you have a milk bottle license outstanding to Universal at any time?

A. They have a license now.

Mr. Isseks: Are you fixing the time?

Mr. Wall: I am asking any time during the time of dealings with Thatcher. Let's say from 1922 to 1941.

The Witness: Well, Universal are still a licensee of ours.

Q. Now, the Pacific Coast Glass Works, when did it have its license first, if you remember?

A. Well, that was 'way back. They had a license to make milk bottles on the Howard feeder, back in '21 I think,— or '20.

Q. When you took over Howard, was there a milk bottle licensee using Howard machines?

A. Berney Bond Glass Company.

Q. How about Winslow?

A. It was not a Howard user; no; that was a Tucker, [fol. 2805] Reeves, and Beatty.

Q. And for sometime did they make milk bottles?

A. Oh, yes.

Q. Florida Glass Company, when were they licensed?

A. After we established our plunger patent; it may have been '33 or '34; I just wouldn't know, somewhere around that time.

Q. Turning to another company, Mr. Smith, there is testimony here that there was some conference along in 1926 between you and H. K. Smith, and one or more of the Ball Brothers regarding a license?

A. Yes.

Q. Had those negotiations at that time resulted in any contract?

A. No.

Q. Then they were resumed at some later time, as you testified, is that right?

A. That is correct.

Q. There is also some testimony about the sale of the General Glass fruit-jar rights. Who conducted the negotiations for the sale by General of its rights?

A. I think Mr. Collins and myself had more to do with that.

Q. Did Ball Brothers take any part in the negotiations?

A. No, I don't think so.

Q. As you understood the situation at the time of that transaction, had General Glass Company been making fruit jars?

A. No.

Q. And so far as you understood at that time were they [fol. 2806] about to get into the fruit jar business?

A. No, I don't think so; at least I never was advised of any plan to go into the fruit jar business.

Q. Where did General get its fruit-jar rights, and its other license rights, for that matter,—if you remember,—where and when?

A. Well, General took over Turner, and I think Turner had some fruit-jar rights which originally were with the Woodbury Glass Company.

Q. Now, at one point in the transcript, on page 730, you made the statement in regard to Ball Bros., "I always assumed Ball Bros. to be the logical one to have our fruit-jar rights." Do you remember making some such statement?

A. Yes.

Q. Why was that?

A. Well, I thought I explained that; it was more or less of, I thought, a highly specialized business, took a great deal of capital to go into the business, and with fruit jars you have to carry a large stock, build up a large stock, that stock is consigned in the early part of the year to the grocers or agents all over the country, and it took a large amount of money to carry that stock, with payment in many cases not received until the summer season when the jars were bought by the jar consumer.

Q. In your judgment, did that mean any advantage to your Company?

A. Oh, yes, I thought our income and royalties would be [fol. 2807] greater from Ball than anybody else.

Q. Do you recall that some time in 1927 there was correspondence between you and Collins, and also between you and Mr. Macbeth, regarding the granting of tumbler rights on your machines to Macbeth-Evans?

A. Correct.

Q. What is the fact as to whether at some later time you did give such rights to Macbeth-Evans?

A. We did. We extended them a license to make hot-mold tumblers.

Q. And did they at any time get rights also to paste-mold tumblers?

A. They did.

Mr. Wall: Now, if Your Honor please, I desire to have marked as exhibits, two papers, one of them being a contract, of which I shall offer only a small part, but I presume it would be proper to mark the contract as an exhibit. The first paper is a license and lease, No. HSF-174, dated June 29, 1929, between Hartford-Empire Company and Macbeth-Evans Glass Company, That will be H-5012.

The next document, H-5013, is a letter agreement addressed to George D. Macbeth, of Macbeth-Evans Glass Company, by Hartford-Empire, and accepted by the addressee, dated November 21, 1932.

The Court: Who is the author of the letter?

Mr. Wall: The letter is by Hartford-Empire Company, per Mr. Safford.

The Court: You offer those two exhibits?

[fol. 2808] Mr. Wall: I offer the two. All I desire the record to show as to 5012 is the date of the license, the fact of its being given, and I then desire to offer Schedule "C", being the specification of glassware which may be made, "Permitted Ware".

Q. Mr. Smith, this license agreement marked 5012 bears the signature of one of your officers, I believe. (After referring to same.) Your own signature?

A. Correct.

Q. Was this license executed and given about the time stated on the first page, June 29, 1929?

A. For making tumblers?

Q. Yes.

A. Yes.

Q. Now, Schedule "C", "Permitted Ware", does that state the ware which the licensee is permitted under this document to make?

A. It does.

Mr. Wall: I offer Schedule "C" in evidence, and I would like to have it read, but I shall defer the reading just one moment while we take up 5013.

Q. This letter, 5013, Mr. Smith, bears whose signature?

A. Mr. Safford's.

Q. Do you know Mr. Macbeth's or not?

Mr. Isseks: I will stipulate both signatures.

Mr. Wall: All right. H-5013 is offered as a whole.

The Court: H-5013 will be admitted and Schedule "C" [fol. 2809] of 5012.

(Schedule "C" of 5012 read.)

Mr. Isseks: Does the contract show the exclusions, too?

Mr. Wall: The contract shows the exclusions.

Mr. Isseks: I would like to offer the exclusions.

Mr. Wall: I have no objection.

Mr. Isseks: Right attached to the same schedule, as part of Schedule "C", there are exclusions, and inasmuch as the permitted ware has been offered, I think, Your Honor, the exclusions should be, which are the so-called Corning field, plus milk bottles, nursing bottles, fruit jars, etc. They are all right there in the contract, and I think that ought to be in as well as the other.

Mr. Wall: Very well.

Q. Now, Mr. Smith, as you classify glass products, if tumblers were sold for containers or package purposes, how would they be classified?

A. As a general container.

Q. Would that come under packers' ware or not?

A. It might.

Q. You notice the provision as to using no paste in the mold and not rotating the mold or the glass?

A. Yes.

Q. Is that the distinction between the paste-mold tumbler, so-called, and the ordinary hot-mold tumbler?
[fol. 2810] A. That is correct.

Mr. Wall: The same question of permitted ware and exclusions will arise under document 5013 before Your Honor, already in evidence. I desire to read part of that document amending the license which has just been read in part.

(Counsel read: "Specification of glassware which can be made. Permitted Ware.")

I will now have marked as Exhibit H-5014, letter of June 1, 1929, from W. H. Curtiss of Corning Glass Works to Mr. F. Goodwin Smith.

I call attention of Your Honor at this time to Exhibit 353 offered by the government, being a letter from Mr. F. Goodwin Smith to Mr. Curtiss dated May 27, 1929, regarding Macbeth-Evans license.

Mr. Isseks: I will stipulate the genuineness.

The Court: Very well, 5014 may be admitted.

(Defendant's Exhibit H-5014 read by Mr. Goodrich.)

Mr. Wall: I now desire to have marked as Exhibit H-5015, photostat of license and lease No. HSF-226, from Hartford-Empire Company to Bartlett-Collins, Sapulpa, Oklahoma, dated December 14, 1931.

Mr. Isseks: I will stipulate its authenticity, Your Honor, although the copy we have here indicates not the original signatures, but no question about it, as far as the government is concerned.

Mr. Wall: I will ask to have marked as Exhibit H-5016, letter agreement dated November 23, 1939, between Hart-[fol. 2811] ford-Empire, per Arthur T. Safford, Jr., and Bartlett-Collins Company, by Ed. Bartlett, Secretary-treasurer, revising fields of ware in the next-previous exhibit.

* * * * * * *

The Court: It may be admitted. What is 5016?

Mr. Wall: This is a letter agreement revising the field of ware, November 23, 1939, between the same companies, Hartford-Empire per Arthur T. Safford, Jr., secretary, accepted by indorsement at the foot of the letter, Bartlett-Collins Company, by Ed Bartlett, secretary-treasurer.
[fol. 2812] The Court: The letter is revising——

Mr. Wall: Revising the field of ware in feeder contract, 5015.

The Court: You offer H-5016?

Mr. Wall: Yes, Your Honor.

The Court: It will be admitted.

Mr. Wall: I will read only one paragraph, the entire document being in evidence, under permitted ware: "Drinking tumblers and packers' tumblers, either iron-mold or paste-mold type, and which may be either pressed and blown or blown, but which conform in type of finish to those commonly used for drinking tumblers."

Q. Mr. Smith, do you remember the occasion of some differences of opinion between you and Mr. I. J. Collins about the manufacture of heat-resisting ware?

A. Yes.

Q. Can you place the time?

A. Only in a general way.

Q. Well, what is your best recollection?

A. I would say around '37, about '38-'39—or right after the Pyrex Patent expired, glass patent expired.

Q. By the way, Mr. Collins continued to be a director of your company until what time?

A. '38.

Mr. Wall: I might say for the Court and for counsel, that our records show the annual election of directors of 1938 to have been held on February 7, 1938, and do not show [fol. 2813] Mr. Collins reelected to the office of director.

Q. In the course of your discussions with Mr. Collins about heat-resisting ware, did you have occasion to take counsel in regard to his rights and yours and Corning's?

A. Well, I think I asked for reports from our counsel on the interpretation of the contract.

Q. When you say your "counsel", whom do you mean?

A. Well, either our patent department, Col. Brown, or W. J. Belknap.

* * * * * * *

[fol. 2814] The Court: The letter you now have identified is dated February 7, 1938?

Mr. Wall: Yes.

The Court: Who is the author of it?

Mr. Wall: Mr. F. G. Smith to Mr. Amory Houghton, beginning: "With reference to the question as to what pro-

[fol. 2815] cedure might be taken against Anchor-Hocking Glass Company." That is the next exhibit, 5017.

We offer next the three letters of February 5, 1938, all of them from Mr. W. J. Belknap to F. Goodwin Smith. They were enclosed with the letter of February 7th, and they will be marked 5018, 5019 and 5020.

H-5018 is a three-page letter beginning, "You have advised me that Anchor-Hocking are threatening".

The next is the same date, "I have written you a letter in connection with Anchor-Hocking". That is one page. (H-5019).

Mr. Isseks: And the last one is two pages?

Mr. Wall: That is right. It begins, "You have asked me for my opinion on whether Corning would have a right of recovery".

These, Your Honor, are offered separately, 5017 to 5020, inclusive.

The Court: They may be admitted.

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[fol. 2816] Q. Your discussions with Mr. Collins about the heat resisting ware continued after he ceased to be a director of Hartford?

A. Oh, yes, we had a number of discussions about it.

Q. In general, what were they?

A. Mr. Collins was quite upset about the situation. He felt he ought to have the right to make heat-resisting ware and baking ware. Our attitude with him was: Here, we had sold a piece of property and sold the exclusive rights to the Corning Glass Works, and we just could not do anything about it. We could not give him something we did not own.

Q. What was the net result of the discussions?

[fol. 2817] A. I suggested that he take it up with the Corning Glass Works, who owned those rights, to see if he could obtain a license from them.

Q. Was that where it was left?

A. I think so, yes.

Q. We were talking yesterday, Mr. Smith, about forming machine development by the Hartford Company?

A. Yes, sir.

Q. In addition to the other machines which Hartford developed for the forming of containers, did you develop an I.S. Machine?

A. General container market.

A. We did.

Q. About when did that development begin?

A. The first machine we shipped was some time in 1923.

Q. What kind of machine is that; that is, as to press operations or blown containers, or what is it?

A. The original machine, as originally designed, was a narrow neck machine, a stationary machine; it did not index or revolve; there were four individual, complete units, sort of like individual section book cases, each unit complete in itself. As those machines were licensed and used by our licensees, the machine at first was considered very efficient for ware up to about 8 ounces in weight; and then through a period of years, by slow improvements and slow development, we finally arrived at a state where the machine had become more of a universal machine, even making some semi-wide mouth ware on it.

[fol. 2818] Q. Semi-wide mouth ware is classified how? Is it blown only, or pressed and blown?

A. On this machine we were making it by the blown process.

Q. Was that the customary way of making semi-wide mouth ware?

A. That would depend upon what your limits were, how big the opening in your container was.

Q. Is the use of the I.S. machine for semi-wide mouth ware a recent development or not?

A. I will say it is a gradual development. The machine was continually improved. In the last few years a great many have been installed and licensed; but for the first seven or eight years, there was a considerable amount of development work on it to bring it up to somewhere near approaching more or less of a universal machine.

Q. By "universal machine", what do you mean?

A. It would make all kinds of narrow neck bottles, semi-wide mouth bottles, and, in some cases, wide mouth.

Q. Has the availability of forming machines for your licensees been a matter of concern to the company in past years?

A. You mean—

Q. To Hartford-Empire?

A. We always wanted to see if we could not give our licensees the most efficient and best type of forming ma-

Q. Has Hartford been making the presses in the past, oh, say, ten years?

A. No, this is the only forming machine; outside of the [fol. 2819] paste-mold machine, this is the only forming machine which has gone into making a general line of ware developed by Hartford.

Q. How long has that been true?

A. I don't think we made any other, outside of the paste-mold machine, that we have made any other forming machines since 1923; 1922, possibly.

Q. Of course, when you were not making the other types of forming machines, it was necessary for the licensee to get forming machines somewhere else, was it?

A. That is correct.

Q. Has the availability of forming machines, other presses, press and blow machines, been a matter of any consequence to your company?

A. Very much so.

Q. For the reason that you need the two pieces of machinery to operate together?

A. That is correct.

Q. Do you remember becoming acquainted rather early in your history with some Headley and Thompson applications?

A. Yes, sir.

Q. Can you place that with reference to the time you made the Owens deal, whether before you made the 1924 agreement with Owens, or after?

A. It was before.

Q. How long, do you remember?

A. I would say perhaps a couple of years.

Q. Had there been any negotiations between your company and Headley & Thompson before 1924 in regard to [fol. 2820] rights under their machines?

A. There had been conferences between the lawyers, Whitall-Tatum lawyers and Hartford lawyers; and patent lawyers.

Q. Headley & Thompson were the inventors and Whitall-Tatum were the owners of the pending applications; is that correct?

A. That is correct.

Q. Did negotiations continue with the Whitall-Tatum people after the contract with Owens was signed in 1924?

A. They did.

Q. Resulting early in 1925 in an option which has been offered in evidence here?

A. That is correct.

Q. What were the reasons, Mr. Smith, why Hartford-Empire desired to enter into that option?

A. Because those applications, if they ever came to issue in the form of a patent, were supposed to obtain very broad claims, which would cover every type of narrow neck forming machine. There, again, we felt that we were buying insurance. We did not know what Whitall-Tatum would do. If the applications obtained patent form, they might bring suit against our licensees; or they might sell to somebody else, who was not friendly; and we just felt that we ought to have that protection,—of course a selfish protection, covering our own machines, but also to protect [fol. 2821] our licensees from being sued on the forming machines which they were using.

Q. Back in 1925, when you took the option, what was your expectation as to when these Headley & Thompson applications would ripen into patents?

A. I think the lawyers felt, or hoped that it might happen soon. There were so many varying reports on those things, from the patent attorneys,—this is not to discredit them, Mr. Wall—but some of their reports used to remind me of—what shall I say—? The four seasons of the year. They sometimes were hot; then they were cold; then they were very virile, and full of confidence; and then they lost some of their bloom.

Q. Speaking only now of the patent attorneys?

A. The patent attorneys' reports which I received so often.

Q. Do you recall along in 1929 there was a new option given?

A. Yes, sir.

Q. And some reduction made in the payments?

A. That is correct.

Q. Then you came along to a time in 1933 when the applications themselves were purchased instead of rights being taken; that is correct?

A. That is correct.

Q. Tell us what your reasons were for desiring to buy the applications, and how it came about that you did.

A. The terms under which we could get a non-exclusive [fol. 2822] license were for over a period of years. The payments would have been far in excess of what we could purchase outright for, so we just purchased them.

Q. What was the price, if you now recall, that was paid?

A. $200,000.

Q. Was there a discussion before the $200,000 price was arrived at, of some lower price?

A. Yes, sir.

Q. What was that?

A. 150,000.

Q. Tell how the price shifted from 150,000 to 200,000.

A. Right after—I cannot tell you how soon after—the price of 150,000, or the offer was made by Whitall-Tatum; shortly after that offer, the Patent Office, or the Patent Court of Appeals, rendered a decision in favor of the Headley-Thompson applications; and Whitall-Tatum boosted the price on us.

Q. From 150,000 to 200,000?

A. That is correct.

Q. How did that price of $200,000 compare with the annual payments which would have been required for a license, if you remember?

A. It was less.

Q. Less that what; less than several years, one year, three, or what?

A. Well, I have forgotten, Mr. Wall.

Q. I call your attention, Mr. Smith, to Exhibit No. 312, [fol. 2823] which was offered the other day, a memorandum dated June 22, 1933, from R. D. Brown, to you, and particularly to a sentence in the middle paragraph on page 2 about the Headley & Thompson applications, which says: "There are some features of the latest I. S. Machine practice which will probably be covered by some of the Whitall-Tatum claims, but I understand that all of these features can be avoided without vitally handicapping the machine." Was that point a subject of discussion between you and members of your patent staff?

A. It was.

Q. Did any change occur in that opinion and their advice to you?

A. I don't know that Mr. Brown changed his opinion; but I know Mr. Parham felt very definitely that some of the claims—that our I. S. Machine infringed some of the claims—what I cannot tell you—and it would be a very expensive matter to attempt to re-design or change the I. S. Machine over so that it would not infringe.

Q. What machines was Lynch making in 1923, what types?

A. The narrow neck machines.

Q. With the same general class and function of your I. S. Machine?

A. Yes, sir.

Q. But a different kind of machine?

[fol. 2824] A. A different design.

Q. Was Lynch at that time making any presses, as far as you know?

A. I think not.

Q. Or press and blow machines?

A. I think not.

Q. What type of forming machines was the Ed. Miller Company, or Ed. Miller personally, making?

A. Press and blow machines, and some presses, I think.

Q. Did these press and blow machines—speaking now of 1933—did these press and blow machines serve the same trade and the same market as a narrow-neck machine?

A. No. It was a purely press machine. Of course you could press jars, press tumblers, and things of that sort. The press and blow machine was generally used for semi-wide and wide mouth ware, which machines operated differently.

Q. After the acquisition by Lynch of the Ed. Miller business, do you know whether Lynch made any of the presses or press and blow machines of the same type which Ed. Miller had previously made?

A. Oh yes.

(Morning recess.)

The Court: Proceed.

Mr. Wall: I ask to have marked as Exhibit No. 5021, a photostat of a letter dated December 16, 1935, from F. G. Smith to the Attorney-General, attention of Mr. John Dick-[fol. 2825] inson, Assistant Attorney-General.

Q. Mr. Smith, do you recall that the Lynch arrangement, between your company and Lynch, that is to say, received some attention from the Attorney-General's department after the contracts were made?

A. It did.

Q. Do you recall that at some time there was some investigation of some matters of your company?

A. There was.

Q. What did that cover?

A. That covered all our contracts.

Q. In that connection, do you remember the name of Snyder?

A. Yes, sir.

Q. Who was he and when did you see him?

A. Mr. Snyder was an agent or representative of the Department of Justice. He came to Hartford in the summer of 1935.

Q. Was he there again during the year of 1935?

A. He was.

Q. In the meantime, were you at any time in the office of the Department of Justice in Washington?

A. I was.

Q. What was the subject of the discussion at Washington, and with whom was the disucssion had?

A. Colonel Brown, Mr. Hewes, a Hartford attorney, and myself went to Washington to call upon the Assistant Attorney-General, Mr. Dickinson. I said to Mr. Dickinson, as he knew, that one of his representatives had been to [fol. 2826] Hartford, that, as far as we were concerned, could I ask him, after he had gone over all of our contracts, if he found anything wrong with them, or he wanted changes made, would he be good enough to so advise me, so that I could have another conference with him before he brought suit, if he found any grounds for bringing the suit; that we certainly did not want to break any laws; and I was quite sure, if he found something that met with his disapproval, if he would so advise me, my directors would be very glad to correct the situation.

Q. Was it after that conversation that Mr. Snyder returned?

A. He returned to Hartford.

Q. Upon his return—have you indicated that the contracts received his examination at that time?

A. That is correct.

Q. After he left, did you write to the Attorney-General's office?

A. I did.

Q. I ask you whether you can identify Exhibit No. 5021 as a copy of the letter which you sent?

Mr. Isseks: We stipulate, Your Honor. I have the original here.

Mr. Wall: It is stipulated.

The Court: Very well. It will be admitted.

Q. One more question before we have the exhibit read: After that time did you receive complaints from the Attorney-General's office about your contract system?

[fol. 2827] A. No, sir.

Mr. Isseks: Wait a while. We filed a complaint in this case December 11, 1939.

Mr. Wall: We have heard of that somewhere, I believe.

Mr. Isseks: The TNEC hearing was in 1938.

Mr. Wall: That is also public knowledge. I intended to have Mr. Smith except the two obvious things mentioned. I will amend my question.

Q. Except for the filing of this suit—you have heard of that—and the TNEC investigation?

A. Yes, I have heard of both of them, Mr. Wall.

Q. Did you have any complaints by the Department of Justice about your contract system?

A. No, sir.

Thereupon Exhibit No. 5021 was read to the Court by Mr. Carlisle, of counsel for Hartford-Empire Company.

Q. Do you recall, Mr. Smith, some exhibits being shown to you during the last few weeks, relating to the purchase by Ball Brothers of forming machines from Lynch?

A. Yes, sir.

Q. You recall there were such exhibits?

A. Yes, sir.

Q. Was that matter ever straightened out, as far as you know, of Ball's objection?

A. The question of signing a forming machine license?

Q. Yes.

[fol. 2828] A. Well, we made what I would call a truce with them, whereby we agreed to not take any action against them as long as those machines were used with our feeders; and they likewise reserved what rights they felt they had.

Q. I notice you said something about a forming machine license?

A. Yes, sir.

Q. Under the Lynch arrangement, as you understood it, originally, was it requisite that the one who got a former have a forming machine license or a feeder license, which one?

A. No, they had a forming machine license from us.

Mr. Wall: I should like to have three other letters marked as an exhibit; the first one——

The Clerk: No. 5022.

Mr. Wall: No. 5022, a photostat of a letter from Hartford-Empire, per R. D. Brown, to Ball Brothers, April 18, 1936.

The next letter of May 10—this will be No. 5023—May 10, 1937; Hartford-Empire, per Brown, to Ball Brothers; attention Mr. George A. Ball.

And May 10, 1937—this will be No. 5024—Hartford-Empire, by Arthur T. Safford, Jr., to Ball Brothers; with an acceptance endorsed on the bottom of the second page: "Ball Brothers, by Edmund F. Ball".

The first exhibit, No. 5022, has not been stipulated, to the best of my knowledge.

[fol. 2829] Mr. Isseks: We will stipulate them all, Your Honor.

Mr. Wall: All right. The other two were stipulated long ago.

The Court: They may be admitted.

Thereupon, Exhibit No. H-5022 was read to the Court by Mr. Goodrich, of counsel for Hartford-Empire Company.

Thereupon, Exhibit H-5023 was read to the Court by Mr. Carlisle, of counsel for Hartford-Empire Company.

Therefore, Exhibit H-5024 was read to the Court by Mr. Goodrich of counsel for Hartford-Empire Company.

Q. Some time in the last month, Mr. Smith, you testified to the percentage of glassware of some kind or other, which was made upon your feeders, and the percentage made upon suction machines, did you not?

A. Is it not in some letter or something?

Q. No, I recall such figure as 67 or 68 per cent.

A. That is correct.

Q. On your feeders?

A. That is correct.

Q. What kind of ware were you referring to?

Q. How about table ware, such as made by Anchor-Hocking, for example?
A. I think that was included.

[fol. 2830] Q. That table ware is what? Is it the mass production stuff?
A. Yes, sold to the chain stores.

Q. How is the better quality of table ware made, on your equipment?
A. No, that is still made by hand.

Q. Is there any considerable volume of that?
A. Oh, yes.

Q. Meaning no offense to Anchor-Hocking, there is a field in which feeders are not used for table ware?
A. That is correct.

Q. How about bulbs, Mr. Smith? Are bulbs made on your equipment?
A. No, sir.

Q. Have they been at any time, that you remember?
A. Oh yes, they were when our feeder was hooked up to the Canfield machine.

Q. In the earlier times?
A. Yes, sir.

Q. There is a hard glass field that we refer to occasionally as being in the past more particularly a Corning specialty?
A. Yes, heat resisting ware.

Q. Is that what is included in the term "hard glass"?
A. I think probably that would be one of the definitions.

Q. Do you know to what extent your feeders have been used in the past in the hard glass field by Corning?
[fol. 2831] A. I have not had any recent figures, Mr. Wall. I would say 30 odd per cent might be made automatically of heat-resisting ware of the Corning output; but I have had no recent figures.

Q. During the past years, has there been a concern named McKee, making heat-resisting ware?
A. Yes, sir.

Q. Do you know what kind of equipment they have used in the manufacture of that kind of ware?
A. No, I have no personal knowledge. I have understood they had a feeder of their own which they have used to some extent—I cannot tell you to what extent—on heat-resisting ware.

Q. How about fruit jars? Is there any producer of fruit jars not using your equipment?

A. You mean now?

Q. Well, in the past few years.

A. The Kerr Glass of course makes a large quantity of fruit jars on something like a stream feed, or something of that sort.

Q. Is Kerr Glass a licensee of your company at all?

A. No, sir.

Q. Is there a field of special ware which is made by hand at the present time?

A. Oh yes, you have your high grade table ware; and then you have a great many concerns making lighting goods, that are all still made by hand.

Q. How about bottles?

[fol. 2832] A. I don't know, Mr. Wall, whether there are some special little bottles, little vials, or something of that sort.

Q. Or fancy articles?

A. Or some fancy articles are still made by hand; I presume there are.

Q. At least in giving the answer as to the percentage of containers made upon your machines, did you intend to include such articles as we have mentioned?

A. No, sir.

Q. Do you know whether there are hand shops still operating in the country?

A. A great many.

Q. Do you know whether there are more such shops than there are Hartford licensees?

A. I don't know it as a fact; I would presume that there were; but I have no facts before me.

Q. You testified yesterday as to your company's policy in the selection of licensees during the early years of its history, substantially, as I recall it, to the effect that you preferred, not such a large number of licensees, but financially sound and good operators?

A. That is true.

Q. In general, has that always been the desire of the company?

A. We started in 1929 to expand our licenses, expand the fields of ware; and when we had established our patent rights, then of course we had to contemplate many new [fol. 2833] licensees, and, as the industry grew and the volume grew, we expanded with the new licensees who gradually expanded their fields of ware.

Q. What was the effect of the gradual expansion of fields of ware as to the number of licensees in any one field?

A. We had a great many more licensees making the same kind of articles than we originally had.

Q. Up until the time this suit was begun, had that been a progressive condition?

A. Yes, a gradual extension of rights.

Q. Had there been any change in attitude on the part of your company as to the desirability of having a larger number of licensees, instead of one or two of the large ones, in various fields?

A. Yes, I think so, Mr. Wall.

Q. And for what reason?

A. As the total volume in the industry grew, there were many cases where a licensee would wish to receive from us, or would ask from us, an extension of his rights; and that we gave him in every case.

Mr. Isseks: Objection to many cases, many instances: I should like to have him name one, two, three, four, ten, twenty. I don't know of any myself.

Mr. Wall: Counsel will be thoroughly informed at the proper time. I should like to proceed, with his permission, now.

Q. Had you finished your answer?

A. Yes, sir.

[fol. 2834] Q. Now, what had been the attitude of your company toward the grant of exclusive rights, generally speaking, after the early history of the company?

A. When we started in, of course, we granted a number of exclusive rights. As the company grew we found occasions, I can't tell you how many, but there were occasions where we could license certain fields of ware if we had not already disposed of the exclusive rights, and I think we felt much less interested in giving the exclusive rights as we commenced to grow up than we did originally.

Q. What has been the attitude of the company the last few years before this suit was begun as to promoting or preventing competition by smaller units with the larger units in the industry?

A. Well, I would say we done everything to keep our smaller units in a competitive situation with the idea that they would have a healthy growth.

Q. What has been your understanding as to whether the policy of the company has been having that effect up until the time of this suit?

A. Oh, I think that is quite true. I think our smaller licensees have all grown.

Q. The industry as a whole has grown too, has it not?

A. Oh yes, very rapidly.

Q. Have you any way of knowing whether the growth of the smaller licensees which you mentioned compares fairly with the growth of the industry as a whole?

[fol. 2835] A. I think their growth would exceed it.

Q. Now some time during 1940 there was a radical change, was there, in your contract situation?

A. There was.

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[fol. 2836] Q. Mr. Smith, do you recall that some time last October there was a directors' meeting of Hartford-Empire Company at the Biltmore Hotel in New York?

A. Yes.

Mr. Wall: I desire to offer the transcript of the minutes of a meeting of October 8th. I have the original minute book here.

Mr. Isseks: No objection.

Mr. Wall: I desire to offer a transcript of the minutes as Exhibit No. 5025. Your Honor please, I neglected to offer that.

The Court: Who is the author of that exhibit?

Mr. Wall: This is the minutes of the Board of Directors of the Hartford-Empire dated October 8th, 1940.

The Court: It may be admitted.

(Mr. Carlisle reads Exhibit H-5025.)

Mr. Wall: If your Honor please, I have in connection with the same matter some contracts to mark which I can proceed with now, or if the Court cares to recess a few minutes early I will stay and mark them and we will stay until after the recess. I can possibly save a few moments.

[fol. 2837] Q. You heard the minutes read, Mr. Smith?

A. I did.

Q. Including the form of a letter?

A. I did.

Q. Was that letter sent out to your licensees?

A. It was.

Q. About when?

A. About the last of October.

Q. The minutes of the meeting are dated the 8th of October. Do you recall about how long after that the letter was sent out?

A. After the 27th or 28th of October the letters were sent.

Q. There is a reference in the letter about a supplemental or a revised contract form to be mailed to the licensees?

A. That is correct.

Q. Has that gone out?

A. It has now, yes.

Mr. Isseks: I would like to have him specify the date. I understand it went out some time in February or March of this year.

Mr. Wall: I am trying to get at the point as quickly as I can, and if I am not interrupted too much I shall.

Q. Do you recall when it went out?

A. I would say about a month ago.

Q. What was the reason for the delay?

A. Negotiations taking place in regard to settlement of [fol. 2838] this suit.

Q. Since that letter went out last October do you recall whether any licensees have extended their kinds of ware which they have been making?

A. I only know of one. There may have been others.

Q. What is that one?

A. Mr. Collins, of Anchor-Hocking Glass, is making heat-resisting ware now.

Q. Did you have some new agreement with Ball Brothers last summer?

A. Yes.

Mr. Wall: I will ask to have marked as the next exhibit 5026, a photostat of an agre-ment amending general feeder license agreement between Hartford-Empire Company and Ball Brothers dated August 1, 1940.

Q. I want to show you Exhibit 5026——

Mr. Isseks: I stipulate it.

Q. —Mr. Smith, and ask you whose signatures are on the last page?

A. R. D. Brown, Vice-president, Aruthur Safford, and Mr. Frank Ball and Mr. Petty.

Q. Do you know Mr. Petty's signature or merely assume that to be it?

A. Merely assume it.

Mr. Wall: The net effect of the agreement which has been offered is to cancel the residual fruit jar rights which Ball acquired, so Ball is a non-exclusive licensee as to fruit jars as it was before. The other fields of ware of the license [fol. 2839] were extended, and since that time of course all lines have been extended. The provision as to Ball Feeders, there is a provision giving Hartford an option under certain circumstances on Ball feeders, which has been cancelled. If Your Honor please, to be sure that we don't repeat and that we get the analysis correct, I am going to ask Colonel Brown to state what was in this contract.

Mr. Brown: This contract, Exhibit H-5026, was an amendment to the agreement between Ball Brothers and Hartford-Empire Company dated March 25th, 1933, which is already in evidence as Exhibit 199. In addition to the matters already stated by Mr. Wall, the cancellation of the residual fruit jar rights formerly held by Ball Brothers, the agreement had various other effects as follows: It called for the payment by Hartford to Ball Brothers of $425,000, all of which has been paid during 1940.

It removed a limitation previously existing as to the number of feeders which Ball Brothers could use for making glassware other than fruit jars.

It cancelled an option which Hartford had to acquire any of Ball's feeder patent rights; Hartford does not now have that right.

It extended to Ball the right to take any of Hartford's machine, standard equipment, that they might from time to time desire. Also it mutually released any claims arising [fol. 2840] out of the 1933 agreement. That was the end of the August 1st contract. And then, of course, by the letter of October 8th, the fields of ware which had been extended somewhat by the August agreement were completely extended so Ball Brothers could exercise their license rights for the manufacture of any kind of glassware whatever.

Mr. Isseks: I would like to point out the contract does specifically exclude Ball Brothers from the Corning field in Section 9 of the contract.

Mr. Wall: That is true, Your Honor, at that time.

We will ask now to have marked as Exhibit 5027,—I don't know whether the record shows my formal offer of Exhibit 5026 or not.

The Court: It was identified but I dont' think you offered it.

Mr. Wall: I would like to have the record show the offer.

The Court: The record may show it was admitted.

Mr. Wall: Exhibit 5027 will be agreement between Hartford-Empire Company and Lynch Corporation dated September 18, 1940, consisting of eleven pages and attached schedule.

The Court: That is with the Lynch Corporation?

Mr. Wall: That is correct, Your Honor.

[fol. 2841] As the next exhibit, 5028, amended feeder license from Lynch Corporation to Hartford-Empire Company, dated September 18, 1940.

Mr. Isseks: Do we have that?

Mr. Wall: You should have. I think you do, probably, Mr. Isseks. I recall I sent a typewritten copy some time earlier in the proceeding.

Mr. Isseks: I have got it. Thank you very much.

Mr. Wall: Now, if there is no question about the signatures——

Mr. Isseks: No question about the authenticity.

Mr. Wall: I offer Exhibits 5027 and 5028 at this time.

The Court: They may be admitted.

Mr. Wall: Mr. Brown, will you state the substance of each?

Mr. Brown: First as to the agreement which is Exhibit H-5027, relating to forming machines, the principal effect of that was that Lynch Company can now sell all types of forming machines that come under any of our patents without requiring the purchaser of such machines to enter into forming machine license with Hartford. Your Honor will doubtless recall there was an agreement between Hartford and Lynch dated August 23, 1933, which is Government's Exhibit 330, which required originally that the purchaser of the Lynch machines coming under Hartford patents must be licensed by Hartford for the use of those [fol. 2842] machines, and Your Honor will also recall that that agreement of 1933 was amended in November, 1938, by a document which is Government's Exhibit 340, removing the limitation in regard to forming machine licenses from Hartford from sale by Lynch of press and blow machines. Now in 1940 the agreement of September 18th, which is Exhibit H-5027, removes all the remaining requirements as to the issuing of specific Hartford forming machine licenses to Lynch's customers.

The agreement proceeded first to cancel the original forming machine agreement between Hartford and Lynch of August 23, 1933, which is Government's Exhibit 330, together with its amendment of August 11th, 1938, which is Government's Exhibit 340. It then proceeded to state that Lynch granted to Hartford a non-exclusive license under all of Lynch's United States patent rights or inventions in existence on August 23, 1933, relating to forming machines, the license giving Hartford the right to make, sell, and lease and license, forming machines of Hartford design.

Next, the 1940 contract gave Lynch a license from Hartford under all of Hartford's United States inventions in existence on the same date, August 23, 1933, with certain exceptions which Hartford retained for itself, particularly relating to the I. S. machine. Lynch could license others to use, but not to sell, forming machines of Lynch type. For all such sales by Lynch coming under Hartford patents Lynch is to pay Hartford a royalty of $100 a machine, and [fol. 2843] neither company will duplicate the other design.

So much for the forming machine contract H-5027. Do you wish me to continue with the next exhibit?

The Court: You may suspend at that time. The bailiff may recess court until two o'clock.

(Noon recess.)

[fol. 2844] (At 2 o'clock p. m., Tuesday, April 1, 1941, the trial was resumed.)

The Court: Proceed.

Mr. Wall: We had just offered, and there had just been received, the amended feeder agreement with Lynch. I will ask Col. Brown to state the contents of that.

Mr. Brown: This exhibit (H-5028) modifies the agreement of 1933 between Hartford Company and Lynch company, which is now in evidence as Exhibit 329. The contract of 1923 granted to Hartford rights under such feeder inventions as might be owned by the Lynch Corp. during a specified period of time, and those license rights were exclusive. The effect of the new agreement of September, 1940, is to make those rights non-exclusive.

Mr. Wall: I will ask to have marked as exhibit H-5029, photostatic copy of document dated September 23, 1940, and captioned, "Assignment, Hartford-Empire Company to Corning Glass Works", consisting of three pages and a cover.

Mr. Isseks: No dispute about the genuineness, Your Honor.

The Court: It may be admitted.

Mr. Wall: The next document which I ask to have marked, and upon marking will offer, is a photostatic copy of an agreement made as of September 23, 1940, by Hartford, Corning Glass Works and Empire Machine Company, consisting of three pages of legal cap.

(Defendant's Exhibit H-5030.)

[fol. 2845] As H-5031 I ask to have marked, and will then offer, agreement as of December 1, 1940, between Hartford-Empire Company and Corning Glass Works, headed, "Modification Agreement", two sheets of paper.

5029, I believe Your Honor admitted?

The Court: 5029 has been admitted. That is the assignment of Hartford-Empire to Corning Glass.

Mr. Wall: And 5030——

Mr. Isseks: I have no dispute about the genuineness of any of these documents, Your Honor.

The Court: Very well, they may be admitted.

Mr. Wall: I will ask Col. Brown to state the substance of those agreements to Your Honor also.

Mr. Brown: Exhibit H-5030 relates to rights between the Hartford, Corning and Empire Companies. There have already been introduced in evidence two contracts, one Government's Exhibit 1, the Hartford-Fairmont and Empire agreement of 1916; and Government's Exhibit 19, the agreement of 1922. The exhibit just introduced, Exhibit H-5030, cancels both of those agreements with all amendments thereof, and is to the effect that whereas under the old agreement there were exclusive rights in Hartford inventions held by Corning and by Empire, and certain exclusive rights in Empire and Corning inventions held by Hartford, both companies, both Hartford and Corning, can now grant rights to anyone else under all of its own inventions without being restricted by any such exclusive rights. In addition to that there are certain other features of the [fol. 2846] contract of December 1, 1940, H-5031. It recites the agreement of 1916, the agreement of 1922, and also recites that Hartford owns certain patents known as the Peiler Punty, the Howard auto-blow and Smith reissue patents, in which Corning then had certain exclusive rights, which rights constituted practically the whole value thereof. Next it provided that the 1916 and 1922 agreements are wholly cancelled, and all rights thereunder relinquished to the grantors thereof.

Next, Hartford agreed to pay to Corning $200,000 annually for the years 1941 to 1945, inclusive; and $100,000 thereafter for the years 1946 to 1950, inclusive.

Next, Hartford agreed to convey title to Corning in the three patents already mentioned, the Peiler Punty, Howard auto-blow and Smith reissue. That assignment has already been offered in evidence, as Exhibit H-5029. Finally, each party to the contract released the others from all claims arising under the agreement or any amendments which had theretofore been executed.

The last exhibit to be offered, H-5031, dated as of December 1, 1940, revised the agreement of September 23, 1940, H-5030, solely in respect to the money payments by Hartford to Corning, which under the December 1st agreement are $112,500 on September 30, 1941, and the same amount on September 30th of each of the following years through 1950. In all other respects the agreement of September 23, 1940, was ratified and confirmed.

Mr. Isseks: our Honor, I assume our Honor's ruling in connection with statements made by counsel for the Govern-[fol. 2847] ment, summarizing documents, is equally applicable to statements made by Hartford and any other defendant, namely, it is merely a resume, not evidentiary, subject to any corrections or qualifications counsel may wish to make.

Mr. Wall: That is our understanding, too.

Mr. Isseks: Thank you very much.

Mr. Wall: Next I ask to have marked as Defendant's Exhibit H-5032, photostatic copy of license agreement and release of exclusive rights, between Hartford-Empire Company and The American Thermos Bottle Company, dated March 11, 1941, effective as of December 31, 1940. If there is no question as to the authenticity——

Mr. Isseks: No question at all.

Mr. Wall: My understanding is that this contract may be offered without testimony as to the signature.

The Court: Agreement of what date?

Mr. Wall: March 11, 1941, Hartford-Empire and American Thormos Bottle Comany.

The Court: It may be admitted.

Mr. Wall: My understanding of the effect of this agreement is that it merely releases the exclusive rights which American Thermos Bottle previously had had for some particular field, Thermos Bottle pistons or containers.

I ask now to have marked as Exhibit H-5033, photostatic copy of supplemental agreement between Hartford-Empire [fol. 2848] and the Federal Glass Company, dated March 4, 1941.

Mr. Isseks: No question about the authenticity of any of these documents.

Mr. Wall: That is offered.

The Court: It will be admitted.

Mr. Wall: I will ask Mr. Brown to state the substance of that.

Mr. Brown: This, again, is a contract cancelling limited exclusive rights. Formerly the Federal Glass Company had the exclusive right to the use of the glass-feeding machine known as the Tucker and Reeves feeder for certain types of tumblers. That exclusive right is now cancelled by this present agreement, and the right is now non-exclusive.

Mr. Wall: Now, I had one other document to be marked. I owe Your Honor a word of explanation. I had included in the photostats which were handed to counsel and to Your Honor, a copy of a proposed agreement in the form it was sent out to Anchor-Hocking. I would prefer to use a contract which has been signed by both parties, and I am going to offer, and I ask leave to substitute photostats which I furnish to counsel and to Your Honor by tomorrow morning. This is supplemental agreement between Hartford-Empire Company and Maryland Glass Corp, dated March 3, 1941. I ask to have that marked as H-5034.

Mr. Isaacs: No question about authenticity, Your Honor. [fol. 2849] Mr. Wall: Exhibit 5034 is offered in evidence.

The Court: It may be admitted.

Mr. Wall: Col. Brown, will you state the substance of this?

Mr. Brown: In brief, the effect of this contract and the similar contracts which have been sent to all Hartford-Empire feeder and forming machine licensees, and signed by a great many of them, is to carry into effect the matters covered by the letter of October 8, 1940, which was read to the Court this morning. With that explanation, I can reduce the analysis of it by saying that Section I cancels all limitations on the fields of ware, the specification of glassware which may be made. As now stated, it reads, "shall consist of any and all articles of glassware".

Section 2 grants to the licensee the right to take as many additional machines of the Hartford standard type as the licensee desires.

Section 3 strikes out any so-called tieing clauses which may have existed in any of the contracts. It also strikes out the provision which formerly required that a licensee had to transfer to Hartford complete title to any patent rights the licensee might obtain covering changes and additions to the leased machines. It substitutes the provision that the licensee shall transfer to Hartford, only a non-[fol. 2850] exclusive license under any such patent rights.

Section 4 amends the royalty schedule to provide rates for such fields of ware as the particular licensee had not theretofore been licensed to make.

Section 5, the section which acknowledges validity of patents, has been modified wherever necessary to bring it to the standard form, which is the following: "So long as this license remains in force the licensee agrees not to dispute the validity of the Letters Patent under which this license is granted, so far as these patents apply to the methods and machines which are hereby licensed to licensee."

Q. Mr. Smith, can you say whether or not similar supplemental agreements were mailed to the other licensees of Hartford, similar to 5034?

A. Oh, yes.

Q. Somewhere along the same time as you have indicated this morning?

A. Yes.

Q. A month or more ago?

A. Yes.

Q. I want to cover one other thing that I would like to have, as briefly as possible and yet completely,—the summary of what operations and what activities Hartford is conducting today. What is your principal business at the present time?

A. Licensing and leasing machines for the glass industry.

[fol. 2851] Q. Have you placed in the hands of licensees, any considerable amount of machinery?

A. Oh, yes, a great deal.

Q. Taking it at the cost basis, how much would you say?

A. Well, it would run into the millions; I would say between five and six millions or more.

Q. Including what types of machinery?

A. Feeders, forming machines, lehrs, stackers, conveyors, batch feeders.

Q. Does your company do anything at the present time as to the designing of new machinery or improvement?

A. Oh, yes, we have a very large drafting force who are continuously working on improvements and new business and new work—research work.

Q. Do you build any parts of the machines or any of the completed machines in Hartford's own plant?

A. Yes, we produce in our plant all clay parts, shear blades, some small parts that will go on lehrs or conveyors. But, as I have testified before, the feeders and the forming machines are manufactured in an adjoining shop to ours, which is the Hartford Special Machinery Company, and we have men working there, inspectors, who follow the machine parts along and the assembling of the machines.

Q. Does the manufacture of those machines require blue prints, drawings and detailed specifications?

A. Oh, very, very detailed drawings, down to 1/10,000 of an inch in some cases.

Q. And who prepares those drawings?

[fol. 2852] A. That is all done by our own draftsmen and engineers.

Q. Do your own employees or engineers take any part in the actual manufacture of machinery in the Special Machinery Company's plant?

A. Only the inspectors.

Q. And when the machinery is completed in the Hartford Special Machinery Plant, what becomes of it?

A. Well, then, it is brought over to our plant and shipped, boxed and crated, and shipped from our siding direct to the licensee.

Q. Is there a process called "running in" the machines?

A. Oh, yes.

Q. What is that?

A. Well, when a machine is completely assembled, it is put under power and what we call "run it dry". There is no glass there, but we run it dry, as far as forming machines go, for a great many hours, to be sure the alignment is proper, and what we call, sort of take the "bugs" out of the machine, if there are any.

Q. And is that done in the Special Machinery Company's plant?

A. That is right.

Q. How about lehrs; where are they built?

A. Well, lehrs, or parts of lehrs, are purchased from various concerns and they are put together in our plant at Hartford, and then dis-assembled and then shipped "knocked down," to the plant of the licensee, and then in the plant of the licensees they are reassembled by our men.

[fol. 2853] Q. As to feeders, formers, stackers, conveyors—who ships them to the licensees?

A. We do.

Q. How about the installation, how is that done?

A. It is superintended by our own mechanics.

Q. Did you mention some machinery or equipment relating to batch handling?

A. Yes. That is the handling of the ingredients that go into the furnace, automatically pushing the batch from a hopper into the furnace.

Q. Does your company supply batch handlers or conveyors?

A. We just started to.

Q. That is a recent development then?

A. Well, the development was several years ago, but it has just recently been put into commercial operation.

Q. Does your company have anything to do with furnace installations?

A. Well, I wouldn't know just what you mean by that. We are called in, and our engineers are called in in an advisory capacity in a great many cases. Sometimes we design the furnaces. We don't actually build the furnaces with our men; that is done by contract, by furnace builders. Very often we have some of our engineers present to inspect the work; but most of that furnace building is done by outside contractors.

Q. What is the reason, Mr. Smith, for contracting out a part of the manufacture to the Special Machinery Company which you have described as being done by them, in-[fol. 2854] stead of doing it yourself?

A. Well, very early in our history we had to make a decision in regard to having other people build our equipment, because to erect and equip a shop of our own, with proper machine tools, would make the cost of our machine plant between six and seven hundred thousand dollars, and we were never sure of a steady enough business to make that capital investment. It was also quite apparent that it would be a "feast or famine" and that shop would have to go outside for additional work, or build some other types of machines for other people.

Q. Well, have you had, in past years, anyone other than the Special Machinery Company working on your machines, building them?

A. No, but about every year and a half we send for bids or ask for bids, send out our drawings and ask for bids from other manufacturers, for such equipment as they might be able to build for our machines, so as to be doubly sure we are getting the lowest possible cost price.

Q. Take your single feeder, for example; has the cost price to you and your licensees remained the same, or changed during the last 10 or 15 years?

A. Well, we used to get $2500 as a license fee and now we get $2,000; but, there again, that statement might be misleading, because the feeder consists of a great many things; the feeder mechanism, then all the clay parts that go with it, all the orifice frames for various size plungers, [fol. 2855] and so on. So that when we speak of what you get for your $2,000, you get the actual structure of the feeder plus variable equipment that goes with it. Now, that may vary in some cases.

Q. How about your I.S. forming machine, has the license fee that you have charged on that remained the same?

A. No, it has come down considerably.

Q. What is it today, do you recall offhand?

A. I think it is $9,000; it used to be thirteen or fourteen thousand dollars.

Q. How do the license fees current today upon the feeders and the formers,—that is your single feeder and I.S. machine,—compare with the cost?

A. Well, the license fee is less than the cost, less than what it cost us.

Q. On one or both machines?

A. On all of them: the lehrs, the I.S. machine, and the feeder complete, with all the subsidiary parts.

Q. I would like to know a little, Mr. Smith, about the buildings of the Hartford-Empire Company. What are your plant facilities at the present time?

A. We have our main building, which, on the first floor, houses our shop where we make our metal parts and also our clay parts; and attached to that building—rather, there is just a little alleyway—our kilns, where we burn the clay parts. Upstairs in that building is a large drafting room, some thirty-odd draftsmen; then the engineers have their quarters, and we have service engineers, and [2856] then we have the production department and accounting department and general executive offices, and patent department.

Q. That is your so-called main building, is it?

A. That is the main building.

Q. When was that put up?

A. The original building was put up in 1920.

Q. Any changes in it?

A. Yes, there have been two extensions to it, or additions.

Q. Do you have a pilot plant now?

A. Yes.

Q. That is an experimental plant?

A. That is an experimental plant.

Q. Where is that?

A. Oh, it is between our main plant, and right next to our main plant is a foundry, then adjoining the next piece of property is where we have our experimental plant and laboratories.

Q. When was that plant built?

A. I think it was in 1930.

Q. Any changes in it since?

A. Yes, additions have been made there.

Q. How is the pilot plant equipped, and what do you do in it?

A. Well, originally it was equipped with a continuous tank, where glass was made every 24 hours, every day, and we tested out our feeders and machines, other inventions, there. About a year ago, or a year and a half ago,—I have forgotten which,—we took down the continuous tank and [fol. 2857] built four-day tanks, and equipped those tanks with feeders. Then we roll up the forming machines to the feeder, so that our experiments are actually made in glass, representing the conditions as near as we can to a bottle plant.

Q. What are the experiments for, in regard to machinery or glass, or what?

A. Well, most of them cover the operation of new feeder improvements, new lehrs, composition improvements, new forming machine improvements,—anything looking to following out a development program looking to advancement in the industry.

Q. Glass making machinery?

A. Glass making industry machinery; and we test out other and different glass batches and formulas.

Q. Tell me about that, what has been the extent of your work in glass formulas, how long has it been going on?

A. Well, that is more or less recent. At the present time we are trying out in the plants of the licensees, an entirely new batch which represents a new glass formula.

Q. Now, in the pilot plant, or connected with it, do you have any laboratories?

A. Yes.

Q. What are they?

A. We have the chemical, physical laboratory and the refractory laboratory.

Q. Take the refractory laboratory first. What is the work that you are doing there?

A. Well, of course we make our own feeder parts, the [fol. 2858] clay parts that go with the feeder, and we naturally are trying to develop better refractories all the time, refractories that will last longer, give better service, and we have done some experimental work there with a refractory that might be either used for feeder parts or for even tank blocks.

Q. Well, what clay parts are there, generally, in the feeder?

A. There is the orifice ring.

Q. Made of clay?

A. Yes.

Q. The plunger?

A. The plunger.

Q. And the lining?

A. Then your spouts; then from there back you have the clay blocks.

Q. Out from the forehearth?

A. Yes.

Q. Would it be somewhat the same as inside of the tank itself, the refractory lining you might call it?

A. Well, it is a smaller chamber where you condition your glass or recondition it as it goes from the main body of the tank.

Q. Taking up the physical laboratory, what is the work there?

A. Well, we have a number of testing machines, and our licensees are continually sending in ware for us to test for tensile strength, why it shows cracks, or things of that sort, [fol. 2859] why they are not getting the perfect distribution in the body of the jar they think they ought to get. And chemical analyses to see whether some one or any other thing is wrong, or why it is not just right.

Q. I understand part of the work is done for your licensees in your laboratories, chemical and physical laboratories?

A. Oh, yes. Every once in a while. I don't feel qualified to talk about this. You should have a physicist or chemist here. There used to be a great many times when the manufacturer would have to shut down a tank because of cordy situations, cord in his glass which left marks in his bottles or jars, that used to be a very expensive proposition. You can imagine taking out a furnace melting tons of glass, and having to shut it down; it would mean an enormous expense and loss to the licensee. Now, many licensees sent us in samples of their glass, if they were on the verge of a cordy condition, or actually are getting cords, they sent it to us to be analyzed in our laboratories. And then we go into the strength of glass. So that whenever most of the licensees—not all, but most of them—whenever they got into trouble, either furnace trouble or glass trouble, or checks in the war or machine trouble, or feeding trouble, they come to us or ask us to send a representative down to see if we cannot help them out.

Q. And is this service the subject of a separate charge to your licensees?

A. No, that service has been free.

[fol. 2860] Q. In addition to the work which you have mentioned for licensees, do your chemical and physical laboratories do any work in your own improvement and research program?

A. Oh, yes.

Q. Are the results of your development and research, in some way or other, made available to the manufacturers who are licensees of yours?

A. Whenever we feel we have completed the undertaking.

Q. Is that result made known to them at an extra charge or is it included in the royalty?

A. No, it is not; there is no extra charge.

Q. Do you furnish any service to the licensees at their plants?

A. Yes.

Q. Tell us what kind of services you furnish.

A. Well, of course there is the operating service.

Q. What do you mean by that?

A. Well, the operation, actual operation of the feeders and forming machines and lehrs. If there is any trouble our men visit the plants and try to rectify whatever trouble there may be. And our district managers are visiting those plants occasionally and keep an eye on how things are going, and find out when there are any questions the licensee might want to take up, or any questions that the licensee might think needed our special attention. Then, in addition to that, we have a survey, industrial survey and statistical department, and we go into plants at their request and analyze their production figures, go into their cost accounting, [fol. 2861] put in new forms for them, sort of industrial engineering, and show them where their losses are; if they are due to any one of fifty different things we try to coordinate their operation. It has only been within the last few years that some of the smaller plants have realized what an important thing the scheduling was.

Q. What do you mean by "scheduling"?

A. Scheduling of orders, because you start out with the theory that, here, you have a large tank of molten glass, and it consumes an enormous amount of fuel, and the most money you can possibly make is to see that all those pounds of glass each day go into salable ware. Now, orders vary; some orders are for small ware, some orders are for larger ware, and there is more or less of an art in scheduling your orders to put on the various machines so that all those machines, working together, will "pull"—what we call "pull"—a tank tonnage, so that you are sure every pound of glass you can get out of that tank during the 24 hours goes into salable ware.

Q. For that service, also, is there any charge made?

A. No.

Q. Have you summarized the services that your company is rendering at the present time in its operation, or is there anything more?

A. Oh, I think in a general way; but so many of my associates could give you a much more graphic detailed account of it than I could.

[fol. 2862] Q. About how large an operating force do you have at Hartford now?

A. Somewhere between 350 to 400 men.

Q. That is including the shop and the engineers and the administrative force?

A. The Hartford force.

Q. Do you have a large number of engineers on the payroll?

A. Yes.

Q. How many?

A. Well, we have a number of Boston Tech graduates. We have mechanical engineers. Then, of course, we have people that have grown up in the glass industry, machine operators who have become quite expert.

Q. Is there such a thing as a glass chemist, to distinguish him from chemists of other varieties?

A. Oh, yes, we have a number of glass chemists, seven or eight of them.

Q. Physicists?

A. Yes.

Q. About how many engineers do you have on your staff at Hartford?

A. Well, now, there is a division there: some are research engineers, some are design engineers, and some are production engineers. I don't know as I could tell you just how many would fall in that category,—perhaps 30 or 40.

Q. In the category of engineers?

A. Of engineers.

Q. Do you include the other scientifically trained men?

[fol. 2863] A. No, I would not include them in that category.

Mr. Wall: I would like to call Your Honor's attention to the fact that Exhibit 415, a stipulation between the Government and ourselves, is in evidence, one schedule of which contains the total annual salaries and wages for the years 1923 to 1939, and the average number of employees. I do not desire to read it all at this time, but I call attention to the fact that the number in 1923 of employees was 116, an average figure, and in 1939 it was 323.

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[fol. 2864] Redirect examination.

By Mr. Isseks:

Q. Mr. Smith, you testified that your company loses money in connection with the licensing of feeders and formers?

A. Yes, our license fee is less than what the actual machines cost us.

Q. And the same thing applies to lehrs, of course?

A. Yes, the license fee on a lehr is below what it costs.

Q. And the various services you have mentioned cost money, of course?

A. Oh, yes.

Q. How does your company get the necessary funds to [fol. 2865] make up the difference between the equipment which you license at a loss and all these services that you give on which you lose money and don't get money for?

A. From royalties.

A. Oh, I see. Sorry Now, how do royalties compare with all these other expenditures? In 1939 you collected six million dollars of royalties, did you not, approximately?

A. Approximately.

Q. And you paid the government a substantial tax, did you not?

A. Oh, yes.

Q. And you paid Hazel-Atlas about a million and a half dollars, did you not?

A. Somewhere around there.

Q. When you got all through, after all these service charges and salaries, which are all set forth in the statement, you still had a profit of about $1,900,00, did you not?

A. I think that is correct.

Q. Now, there has been some evidence here that you had new license agreements executed in 1941, although you sent out a letter sometime in October, 1940. Have all the licensees signed agreements under the new supplemental set-up?

A. I couldn't tell you, Mr. Isseks.

Q. Well, you know as a fact Anchor-Hocking haven't signed to date?

A. I just heard that.

Q. Don't you know Mr. Collins has told you he won't sign?

A. No, he hasn't told me.

[fol. 2866] Q. You don't know whether or not he will?

A. No.

Q. Has any other licensee indicated there is some question about it?

A. Not as far as I know. You see I have been out here, Mr. Isseks; I don't know just what letters have gone to Hartford about those new agreements.

Q. Some of the license agreements from Hartford to the licensees have been made since the trial started?

A. Yes.

Q. I think there is no dispute the Liberty license agreement was dated March 17, 1941.

Mr. Wall: I don't know whether that is the date of signing by Liberty or the date sent out. I will take your word.

Mr. Isseks: I have the original agreement dated March 17, 1941. Whether that is the date on which Liberty signed, I don't know. Agreement made the 17th day of March, 1941, effective as of October 8, 1940, purports to be signed by Mr. Eldred and Mr. Collins.

Mr. Wall: That is right, and the date is at the top of the first page, written in longhand, at the time of signing, presumably. At top left-hand, it says: "Dictation date 2-20-41"; sometime between those dates Hartford, no doubt, executed it.

Q. Now, you have testified as to when your company went into the forming business. What is your present recollection of the first time your company went into the forming business, the manufacture of forming machines?

[fol. 2867] A. Well, I think I testified yesterday the first commercial machine was a milk bottle machine, the press and blow machine, which was started in early '16 and completed by the end of the year, or the first part of the next year.

Q. What other forming machines do you make besides the press and blow forming machine?

A. Well, we started off with this I described yesterday, this original continuous pressing machine, which for various reasons didn't prove highly commercial. Then the next machine was the milk bottle press and blow machine. Then the next machine was the twin press for the Monongah Glass Company. Then we built a narrow-neck machine and a press and blow machine. Those were used by Illinois Glass Company and other licensees. Then we started the I. S. machine in '23, the one we were talking about this morning. Then we built an H. machine, paste-mold machine, and that didn't work any too well, so we had to completely redesign that, and that is now called our No. 28 paste mold machine; and then late in the 20's we built and installed in one plant what we call the No. 12 continuous bottle machine.

Q. In 1933, the early part, you were manufacturing your I. S. machine, were you not?

A. That was the main forming machine.

Q. Who was your principal competitor at that time in connection with the manufacture of narrow-neck forming machines?

[fol. 2868] A. Lynch Company.

Q. Were you manufacturing the other types of forming machines as to which you have just testified, in the early part of 1933?

A. I think we were still building one or two paste mold machines.

Q. Anything else?

A. We weren't building—and perhaps one No. 12 continuous machine; but the I. S. machine was a machine that most of our licensees wanted, if they wanted a forming machine from us.

Q. Were you manufacturing anything else but the I. S. machine in the early part of 1933, forming machine?

A. There may have been several of the paste mold machines.

Q. But to that extent the Ed Miller Company was a competitor of yours, was it not?

A. Yes.

Q. Do you remember what precipitated your going into the manufacture of the I. S. machine, what circumstance?

A. Yes.

Q. Will you please tell me?

A. Well, I went to Alton, Illinois, to witness our narrow-neck bottle machine in operation and our press and blow machine in operation, and those were two-table machines, and on each table were the very heavy molds. The machine would index, the gob would drop down, and index again; and it seemed to be a terrible strain on any machine to have to stop and start and carry tons of metal around with it. [fol. 2869] So, coming back on the train,—I think Mr. Herbert Smith was with me,—I said: "That seems to me too much of a load." I said, "Well, I have got an idea. Couldn't we get up a machine like the Globe-Wernicke individual section bookcase, where you could have each section a complete machine in itself, and then you could have two sections, or three sections, or six sections, or eight sections." And I just sketched out the idea, and I went back to Hartford, and I called in one of our mechanical engineers and I said to him, "Henry, I have got a crazy idea for you. Now, you just take four or five months off and you see whether you can work out anything." One of those days he did come back and he thought he had something, and we went ahead and developed it. It was called the I. S. machine—individual section machine. But in the early days there was a good deal of joking about it, because some people said it ought to be called the Ingle-Smith machine.

Q. Are you through, sir?

A. Yes.

Q. Do you remember any commercial consideration other than those you have set forth?

A. Well, you always hope that you can improve your own equipment, and if you can put into the hands of a licensee a more efficient machine, and it will produce glassware cheaper, and if you can improve the quality of the glassware, of course that is our job.

Q. You are all through, sir?

[fol. 2870] A. Yes.

Q. Do you remember any commercial considerations back in 1922 which motivated your company in going into the forming business?

A. Well, those I have told you.

Q. Don't you remember in the summer of 1922 your company was having litigation with Owens with regard to gob feeding devices?

A. Oh, yes. Now, wait a minute——

Mr. Wall: No.

The Witness: No.

Q. The summer of 1922?

Mr. Wall: No.

The Witness: No, they didn't sue us. They had a patent issued, the Lott Patent, but they didn't sue us, I think the testimony was, until '23.

Q. Were you fighting in the Patent Office in the summer of 1922?

A. Yes.

Q. Do you remember at that time there were two principal manufacturers of forming machines in this country —O'Neill and Lynch?

A. And Ed Miller.

Q. Ed Miller was another one?

A. Yes.

Q. Do you remember at that time there was some worry on your part for fear Owens would acquire control of O'Neill and Lynch and thereby control the forming machine [fol. 2871] as well as one phase of gob feeding?

A. I don't happen to remember it, Mr. Isseks.

Mr. Isseks: At this time I offer in evidence a letter dated October 27, 1924, from V. M. Dorsey to the witness, "re Headley & Thompson." I have a copy here for Your Honor and a copy for counsel. It has been stipulated.

Q. I show you the letter and ask you whether you received that in the regular course of business.

Mr. Wall: That is correct; it was stipulated as genuine. [fol. 2872] A. I don't remember this particular letter. I must have received it, Mr. Isseks.

Mr. Isseks: Counsel has stipulated the genuineness. I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

* * * * * * *

[fol. 2873] The Court: It may be admitted, over objection.

Thereupon, the first two paragraphs of Exhibit No. 591 were read to the court by Mr. Kramer of counsel for the government.

Q. You read that before, did you not?
A. Just read it, yes.
Q. You heard it read?
A. Yes, sir.
Q. Does that conform to your recollection in the matter?
A. No, it does not, because we had our own narrow-neck forming machine and we had our own press and blow machine; and we undertook the development of this I. S. Machine, thinking it would be a much superior machine.
Q. On your forming machines, you had certain patent applications, did you not?
A. Oh, yes.
Q. And Headley & Thompson had certain patent applications?
A. Yes, sir.
Q. I think there have been memoranda here going from your associates to you showing that the Headley & Thompson applications did not issue until some time in 1933——

Mr. Isseks: Mr. Parham says 1934. I will accept that.
The Witness: I thought it was 1933.
Mr. Isseks: So did I.

[fol. 2874] Q. Did patents ever issue on your forming machines?
A. Oh yes, we have quite a few patents on our forming machines.
Q. After 1934 or before?
A. Some before and some after.
Q. The correspondence indicates there might be some problem with regard to the Headley & Thompson patents reading on to your machines. Did they issue at all?
A. I can't tell you. I would not know.
Q. Were not your patent applications in interference at one time with the Headley & Thompson?

A. I don't know. You will have to ask Mr. Parham that question.

Q. Maybe I will have that pleasure some day. What was the reason you bought the Headley & Thompson applications? I believe you testified this morning, in order to buy an insurance policy?

A. Yes; because they were considered by some people to be of such an early date that they might control a certain very important operation on any kind of narrow-neck bottle machine.

Q. Headley & Thompson were not your inventors?

A. No, they worked for the Whitall-Tatum Company.

Q. You recognize the memorandum as having been written by you some time prior to the final contract between Hartford and Owens, dated April 9, 1924, as to various considerations that you set down before the contract was [fol. 2875] finally entered into?

A. Yes, sir.

Mr. Isseks: Hartford's Exhibit 5006.

Q. You state in the memorandum that going ahead will result in your indirectly hastening—I am re-phrasing it—the words are: "We indirectly will hasten the issuance of all patents if Owens and some of our attorneys are correct in their estimate of their value of the Lott Patents against Federal." That was one of the reasons you went ahead?

A. Yes, hastening the issuance of our own patents.

Q. Up to April 9, 1924, none of your patents had issued?

A. None of the fundamental ones had issued.

Q. The Steimer application did not come out, either, until afterwards?

A. No, sir.

Q. And all of the Peiler patents had not issued?

A. Not the important ones.

Q. Not the ones you considered basic?

A. That is right.

Q. You say in this memorandum: "Therefore it is not assumed Federal will come into the pool (stricken) family." That is, you thought they would come into this "pool (stricken) family"?

A. Yes, we thought they would.

Q. And they did, did they not?

A. Yes, sir.

[fol. 2876] Q. You say also here: "Miller licensees are apt to follow." They came in too, did they not?

A. Eventually.

Q. Your patent applications did not issue until after you bought out Tucker, Reeves & Beatty?

A. Not the fundamental patents?

Q. And they did not issue until you bought out Miller?

A. No sir.

Q. And of course they did not issue until after you made your contract with Owens, in April, 1924?

A. That is right.

Q. There is nobody who can tell you now if they ever would have issued if you had kept on fighting with these three groups?

Mr. Haight: Objection to that.

The Court: Yes, I suspect that calls for a conclusion.

Q. You also say in this memorandum, on the last page, after the statement about the chewing gum: "This is not a case of saving our bacon, but a case of where a guarantee saves our dividends." You testified on questioning by Mr. Wall that you did not have any dividends up to then?

A. No, sir.

Q. That was 1924?

A. That is right.

Mr. Isseks: That is slightly in error.

Mr. Wall: No, the evidence now is to the same effect,

[fol. 2877] that there had been none prior to 1924, in April.

Q. There were no dividends prior to 1924, in April? I am now reading from Hartford's Exhibit No. 5002. I must find the same place. I understand they had a preferred stock dividend in 1923. Maybe I am wrong. We can look at the schedule.

The Witness: We had the issuance of preferred stock, which we had to pay dividends on.

Q. You could not pay dividends unless you earned them?

A. I think probably you are right, Mr. Isseks.

Mr. Isseks: The stipulation is right here. I am reading from the schedule furnished us.

Mr. Wall: Let him finish, and if there is anything we cannot stipulate, we have no objection to it being offered.

The Witness: I think on the preferred stock issue, we did pay a dividend on that preferred stock issued the latter part of 1923. I am not sure.

Mr. Isseks: Your Honor, I am now reading from the schedule showing Hartford-Empire Company statement of profit and loss December 31, 1923. It shows here "Dividends—Preferred, $77,214.05" for the year 1923.

The Witness: I think that is probably right.

(Afternoon recess.)

The Court: Proceed.

Mr. Isseks: Your Honor, at this time I should like to point out that Exhibit H-5002, which is a schedule of profit [fol. 2878] and loss statements, shows that in 1924—I will give the figures only in thousands—Hartford earned a little over $165,000 net, and paid dividends of $51,000 on the preferred, and -71,000 on the common. In 1925 they had a net profit of $225,000, and paid dividends on the preferred and common. In 1926 they had a net profit of $339,000, and paid dividends on the preferred and common. In 1927 they had a profit of $335,000, and paid dividends on the preferred and common. In 1928 they had a profit of $221,000, and paid dividends on the preferred and common.

Q. Mr. Smith, do you know whether or not you paid dividends since 1928?

A. No, I think we retired our preferred stock.

Q. You have paid dividends on your common, have you not?

A. Yes sir.

Q. For each year?

A. Yes sir.

Mr. Isseks: Profits for the year 1929 and years thereafter are as follows: 1929, 326,000; 1930, 311,000; 1931, 227,000; 1932, 326,000; 1933, 637,000; 1934, 689,000; 1935, 964,000; 1936, 1,682,000; 1937, 1,934,000; 1938, 1,443,000; 1939, 1,929,000.

Q. Mr. Smith, the profit figures which I have just referred to are after paying income taxes and payments of a portion of divisible income to Owens and Hazel to 1935, and since then to Hazel-Atlas.

[fol. 2879] A. That is correct.

The Witness: Did we clear up that preferred issue of 1923?

Mr. Isseks: I think the stipulation shows you paid dividends on the preferred stock for that year.

Q. I want to refer to Exhibit H-5008, a report made by Messrs. Honiss, Dorsey and Brown. On page 5 they say, in connection with Tucker and Reeves:

"As to the claims recently allowed to T. & R. by the Commissioner, we think that we should have a chance of defending successfully, such defense to be based (1) Upon the dissimilarity in principle between our feeder and the T. & R. feeder, and (2) Upon our own work, and (3) On prior art. The latter defense we should be loath to urge:"

Did Honiss, Dorsey and Brown tell you why they would be loath to urge the defense of the prior art?

A. No, I don't think so.

Q. Did they not tell you if the defense of the prior art were successful, yours and everybody else's patents would be open to the public domain?

A. No. We never thought that.

Q. You testified which companies had milk bottle rights. I should like to go briefly over that. Thatcher had no restrictions on these bottles, that is, prior to this lawsuit? [fol. 2880] A. That is correct.

Q. Owens had no restrictions?

A. That is correct.

Q. Liberty had no restrictions?

A. That is correct.

Q. Universal did?

A. Yes, sir.

Q. Lamb had restrictions?

A. Yes, sir.

Q. Florida had restrictions?

A. Yes, sir.

Q. Hazel-Atlas had restrictions?

A. They did not have a permanent license.

Q. It was temporary, but there were no restrictions?

A. Yes, a temporary license, to be recalled any time.

Q. Did Buck have restrictions?

A. Yes, sir.

Q. Did Illinois-Pacific have restrictions?

A. Before they were bought out by the Owens-Illinois Company?

Q. Yes.

A. I don't remember.

Q. You testified on examination by your counsel that at one time your feeders were used for making bulbs in connection with a Canfield machine?

A. Yes, sir.

Q. When did that stop?

[fol. 2881] A. I think, 1931.

Q. Do you know the circumstances under which there was a cessation of the use of your feeder with the Canfield machine?

A. I think when Corning developed their own No. 399 machine, that new machine was substituted for the feeder, the Corning "H" machine unit.

Q. You testified there were some hand shops around the country, manufacturing glassware by hand?

A. Yes, sir.

Q. Do they manufacture much of the volume of the whole country?

A. I would not know. I have never seen statistics on that.

Q. What is your understanding of the total, general volume on container manufacture in the country, on automatic machines, as against non-automatic?

A. It would just be a guess because I have never seen statistics gotten together covering the production of all hand producers.

Q. What is your understanding?

A. I just could not tell you.

Q. Have you any idea at all?

A. No, sir.

Q. Would you say even?

A. No, I don't think even.

Q. 75 automatic and 25 non-automatic?

A. I don't think it is as much as that.

Q. Do you think it would be less than 25 non-automatic?

[fol. 2882] A. I would not know.

Mr. Wall: May I suggest to counsel that perhaps he and the witness were not talking about the same thing, if he limits it only to containers. I took in some other articles. Perhaps you meant to. I don't know.

Q. I am talking about the glass container field.

A. Oh, I thought you were talking about all these hand shops,—how much they produced.

Q. Your counsel asked you whether you were correct when you testified that 67 per cent of all glass containers were manufactured on Hartford feeders and formers?

A. Yes, sir.

Q. I thought you qualified the answer you gave when I examined you by saying that there were some glass containers that were manufactured by hand.

Mr. Wall: That was not my understanding of what I was asking, or what I got from the witness. I was taking in table ware, bulbs, and similar things. When you get to containers, perhaps that means something different to him.

Q. Take the glass container field; what is your impression of the total manufactured by your feeders and formers?

A. About 67.

Q. What percentage is manufactured by Owens, automatically, as far as you know?

A. I think 3 per cent of the container field is manu- [fol. 2883] factured by Reed, and Obear-Nester and Kerr, who are not our licensees. If that were so, that would bring it down to 97 per cent we were talking about. We produce 67 per cent. That would leave 30 per cent produced by suction.

Q. That is, by Owens?

A. Yes, sir.

Q. You testified on examination of counsel that gradually you were extending the fields of ware to your licensees. In that connection I refer you to Exhibit No. 246, which is a letter dated February 17, 1934, from you to Mr. Houghton; paragraph 5, on the second page, where you say:

> "We have not been legally prohibited from licensing single feeders or milk bottles to anybody we saw fit, but during all these years we have protected Thatcher and Berney Bond and Buck by refusing to grant additional licenses for milks. This action on our part has stabilized the price situation, and has been worth hundreds of thousands of dollars to Thatcher."

Does that refresh your recollection that you did not extend any licenses in this milk bottle field?

A. As far as the milk bottle field is concerned, we did give Buck two increases; and also gave Florida Glass Company an increase in the number of milk bottles they could make. I was talking in general about broadening the fields of ware to our licensees.

Q. Did you give anybody the right to manufacture fruit jars after the 1933 contract?

[fol. 2884] A. No, sir.

Q. You could not.

A. Could not.

Q. So you did not extend it there?

A. That is right.

Q. Before you gave the license to Ball Brothers in 1933, did you give anybody the right to manufacture fruit jars?

A. General Glass had the right.

Q. Anybody else?

A. Salem Glass had the right to make a particular type of fruit jar; and I think the Gayner Glass only had a temporary license.

Q. In that connection, I direct your attention to a letter of December 22nd, 1932, from you to Mr. F. C. Ball, president of Ball Brothers; Government's Exhibit 181; where you say in the third paragraph from the end:

"I hope, Mr. Ball, you will give some due appreciation to the fact that we are continually declining new business in the belief that an association with your Company would be more beneficial to us than to take our fruit jar rights and license a number of concerns. The easiest thing we could do would be to license Kerr, Brockway, Underwood, Monaca, and five or six more concerns in the east and south, as well as on the coast. Our troubles would then be at an end, for income would commence to flow into Hartford, and [fol. 2885] every once in a while I am almost inclined to believe that this is what we should do."

You wrote that?

A. I did.

Q. You went ahead and gave the license to Ball Brothers?

A. Yes, sir.

Q. And after that you did not license anybody in fruit jars?

A. That is correct.

Q. In Hartford Exhibit 5025, minutes of meeting of the Board of Directors, there is a letter, and you say in the next to the last paragraph of that letter:

"One of the fundamental issues involved in the beforementioned suit is the claim by the government that Hartford has exercised an undue power in the selection of licensees. With this we do not concur. We have granted licenses in the past, and are prepared to grant new licenses in the future to newcomers who, with due regard to financial and kindred considerations, may be reasonably expected to continue in the glass business."

Do you know of any newcomer with new capital that your company has issued a license to?

A. I thought we said the other day, Mr. Isseks, that the Diamond Glass Company, the rehabilitation of that com- [fol. 2886] pany, was furnished by entirely new capital.

Q. But they were in business before?

A. But the plant had been shut down. And I thought I also said we had offered a license to the Shemwell Glass Company; and to a company called the Inter-Mountain Company.

Q. Take up Shemwell: they were in the business of manufacturing lamp chimneys, were they not?

A. I think that is true.

Q. They came to see you in the fall of 1939 at Hartford?

A. Yes, sir.

Q. What did you tell them, if you remember?

A. They came up and discussed the whole situation. They were not entirely familiar with the industry. The gentleman that came along with another representative of his was a Mr. Olmstead, who was president of the largest bank in Dallas, and a very prominent man. We discussed the situation back and forth. He wanted our terms and conditions. As I remember it, we told him he ought to have at least $500,000 to go into the industry and start the plant. He said: "Now look here: I have come a long ways. What I want to know from you is, after going back and talking this matter over further with my associates, if I want a license, will your company give me a license?" We told him, yes, we would extend the license to him.

Q. Did you not tell him that you would give him a license [fol. 2887] only if he got a management that was suitable to you?

A. No, we told him that what he ought to have, if he was going into the industry, was efficient operations of the machines; somebody that knew something about the glass business; he ought to have some good organization all of the way through there, from sales down. But we did promise to grant him a license if he wanted to go ahead.

Q. Do you not remember you told him he would have to get a management satisfactory to you; and that they told you they had some tie-in with Knox Associates; and that you said: "If Knox Associates will manage it, then we will give you a license"?

A. I don't remember that we ever said to anybody that the management would have to be satisfactory to us, as a condition. I think something came up about the Knox Company, and a possible association with them.

Q. Did you ever give them a license, actually?

A. No, he never came back and asked for a license, which we said we would give him.

Q. You have not anything in writing which shows you were willing to give him a license on these conditions?

A. No; but I think it will be proven by Mr. Eldred on the stand, and Mr. Pease.

Mr. Isseks: Your Honor, I should like to offer three documents, the originals of which were furnished us by Hart- [fol. 2888] ford: Exhibit No. 592 is a letter dated October 26, 1939, addressed to the witness, signed by Harry Olmsted.

Exhibit No. 593 is a letter dated November 14, 1939, addressed to Mr. A. M. Pease, signed by Orval A. Slater.

Exhibit No. 594, a letter dated November 16, 1939, addresed to Mr. Slater, and signed by Mr. Pease.

Mr. Middleton: Your Honor, I wish to note a special objection, as to the date.

The Court: They may be admitted, subject to objection.

Thereupon Exhibits Nos. 592, 593, and 594 were read to the Court by Mr. Lewis, of counsel for the government.

Q. You heard those read, did you not?

A. Yes, sir.

Q. Did that refresh your recollection at all?

A. Yes, to this extent: I think when Mr. Olmsted was in Hartford, he said something about, well, "Supposing we cannot raise all of the money ourselves:" And I think the question of taking it up with the Knox Glass Company did come up.

Q. You never issued them a license, anyway?

A. No, they never went ahead with it.

Q. You notice in the letter, Government's Exhibit No. 593, Mr. Slater says, in the next to the last sentence:

[fol. 2889] "We feel this arrangement covers the points you have outlined in earlier correspondence, and therefore ask that a broad license for six feeders be issued to us at an early date."

You heard the response he got, did you not?

A. Yes, sir.

Q. You said something the other day about offering a license to a glass company in Utah?

A. I think we did.

Q. They were in the business, using Miller feeders?

A. I cannot remember whether they were operating with Miller feeders. That I cannot tell you.

Mr. Isseks: Your Honor, at this time I should like to offer two pieces of paper: one an original letter furnished by counsel for Hartford, on the stationery of Inter-Mountain Glass Manufacturing Company, dated September 19, 1936, addressed to Mr. A. M. Pease; signed by a gentleman whose name I cannot read, but on the copy apparently it is Aiken. That will be Government's Exhibit No. 595.

And the reply is the next exhibit, No. 596, dated November 3, 1936.

Both documents, Your Honor, were furnished us by counsel for Hartford this morning, and I offer them both in evidence.

The Court: They may be admitted, over objection.

Thereupon, Government's Exhibits Nos. 595 and 596 were read to the Court by Mr. Kramer, of counsel for the government.

[fol. 2890] Q. Did I understand you to say, Mr. Smith, you never inquired as to questions of management when I said something about Knox?

A. I said I did not think that that would be the sole requirement in granting a license.

Q. Did you ever issue a license to the Inter-Mountain Glass Company?

A. We never did but I think we definitely offered them a license.

Q. That letter indicated you would give them something if they would give you title to their Miller feeders. Anything besides that?

A. I could not tell you.

Q. Mr. Pease has been with your company for many years, has he not?

A. Yes.

Q. And he is very familiar with the licensing policy, is he not?

A. Yes.

Mr. Isseks: At this time I would like to offer as Government's Exhibit 597 carbon copy of an original letter given us this morning by counsel for Hartford, dated December 27th, 1940, addressed to one G. Ahrons, organizer, Nola Glass Industry, New Orleans, Louisiana, and signed by Mr. Pease.

The Court: Do you offer it?

Mr. Isseks: Yes, Your Honor.

[fol. 2891] The Court: That may be admitted, over objection.

(Government's Exhibit 597 is read by Mr. McCracken.)

Q. Mr. Smith, the contract between your company and Hazel-Atlas, dated July 1, 1932, has not been cancelled?

A. It has not.

Q. The contract which your company has with Owens-Illinois, dated in 1935, has not been cancelled?

A. Not for '35.

Mr. Wall: Weren't there several?

Mr. Isseks: All of the contracts of 1935.

Mr. Wall: They have not been cancelled; that is correct.

Q. They have not been cancelled?

A. No.

Q. You have not cancelled the contract with Howard by which you took over the Howard feeder business, have you?

A. I don't know about that contract.

Q. You acquired the Howard Feeder assets?

A. We acquired the assets of the Howard Feeder Company.

Q. About 1922 or '3?

A. Yes.

Q. Do you remember the letters about keeping them in Europe?

A. Yes.

Q. You haven't cancelled that contract, have you?

Mr. Goodrich: That would show in the contract because it was a purchase of assets.

[fol. 2892] Q. You purchased the assets of Howard?

A. Yes.

Q. Did ever unscramble the purchase of assets?

A. We purchased the assets. They belonged to us and still belong to us.

Q. You made a contract with Corning which you cancelled and agreed first to give them a million five, and then later, more?

A. Yes.

Q. You made a deal with Tucker, Reeves & Beatty to pay them $1,600,000?

A. Yes.

Q. You haven't unscrambled them?

A. I don't know what you mean by unscrambled.

Q. You still have them?

A. Yes.

Q. You paid a certain amount of money for rights with Lynch, about $125,000?

A. Yes.

Q. You still have that?

A. Yes. They were changed as you heard this morning.

Q. You still have the feeder rights; you never gave them up?

A. As you heard this morning, they were changed from an exclusive to a non-exclusive basis.

Q. Didn't you acquire some feeder patents from Lynch?

A. A license.

Q. Only a license?

A. That is all.

[fol. 2893] Q. You acquired certain O'Neill Feeder rights, did you not, in 1933?

A. Yes.

Q. Paid a hundred thousand dollars?

A. Yes.

Q. Still have them?

A. Yes, on annuity.

Q. Whatever the contract was?
A. Yes.
Q. You still have the contract rights you purchased from Rankin?
A. Yes.
Q. You still have the rights which you paid Kucera $85,000 for?
A. Yes.

Mr. Isseks: No further questions.

Re-cross examination.

By Mr. Wall:

Q. I will call your attention to the part of the first paragraph of Government's Exhibit 597, the second sentence, "Our position regarding newcomers in the industry is not a bit different", et cetera. Will you read that to yourself, please? Have you read it?
A. Yes.
Q. Now, Mr. Smith, assuming applications for licenses from newcomers with adequate paid-in capital, good management, experienced personnel and sponsors, and a sincere desire to enter the glass business, to become a constructive factor as opposed to a promotional scheme or nuisance, is it [fols. 2894-2895] the policy of your company to grant such license or not?
A. It is.
Q. Reference was made at the beginning of redirect examination to the manufacturing of paste-mold forming machines. What was the volume of manufacture of paste-mold forming machines by Hartford in the early 30's?
A. Very small. We only had four or five paste-mold forming machines under license.
Q. Do you recall any which were being built or furnished in the early 30's?
A. I don't know the dates. The Hocking Glass Company had two. The MacBeth Evans Glass Company had one, and I have forgotten just when the Federal Glass Company took their first one, but I think they have two now, or one is about to be shipped.
Q. What was the volume of Ed Miller's business in paste-mold forming machines, if you know?

A. I don't think he ever made a paste-mold forming machine.

Q. In response to another question about bulb income as to when it started or stopped, I don't know which, you mentioned the year '31?

A. It was either '30 or '31.

Q. Was that when your income on bulbs, on your feeders ceased?

A. Yes.

* * * * * * *

[fol. 2896] Thereupon, the Government, further to maintain the issues upon its part, called as a witness Roy R. Underwood, being first duly sworn, testified as follows:

Direct examination.

By Mr. Freed:

Q. What is your name?

A. Roy R. Underwood.

Q. Where do you live?

A. Knox, Pennsylvania.

[fol. 2897] Q. What is your business?

A. President, Knox Glass Bottle Company, and its seven associated companies.

Q. I assume the Knox Glass Bottle Company is engaged in the glass business?

A. Yes.

Q. Judging by its name. Now what are the affiliated companies to which you made reference?

A. The Wightman Bottle & Glass Manufacturing Company, Parkers Landing, Pennsylvania. Marienville Glass Company, Marienville, Pennsylvania. The Pennsylvania Bottle Company, Sheffield, Pennsylvania.

Q. Any others?

A. The Oil City Glass Bottle Company, Oil City, Pennsylvania.

Q. Any others?

A. The Metro Glass Bottle Company, Jersey City, New Jersey.

Q. Any others?

A. The Knox Glass Bottle Company, Jackson, Mississippi.

Q. What is the connection between these various companies, Mr. Underwood?

A. The Knox Glass Bottle Company of Knox, Pennsylvania, holds a substantial stock interest in these respective companies.

Q. What is your particular position with the Knox Glass Bottle Company?

A. President.

Q. Now what is the stock ownership of the Knox Glass [fol. 2898] Bottle Company in the Pennsylvania Bottle Company?

A. 66⅔ per cent.

Q. And in the Marienville Glass Company?

A. About 40 per cent.

Q. And the Wightman Bottle & Glass Manufacturing Company?

A. About 40 per cent.

Q. And the Oil City Glass Bottle Company?

A. About 56 per cent.

Q. And the Metro Glass Bottle Company?

A. 33½ per cent.

Q. And the Knox Glass Bottle Company of Mississippi?

A. A wholly owned subsidiary, 100 per cent common stock.

Q. Do each one of these concerns maintain their own sales organization?

A. No. The Knox Glass Bottle Company, Knox, Pennsylvania, the Wightman Bottle & Glass Manufacturing Company, Parkers Landing, Pennsylvania, the Marienville Glass Company, Marienville, Pennsylvania, and the Oil City Glass Company, Oil City, Pennsylvania, own all of the stock of what is known as the Knox Glass Associates, Incorporated, whose function it is to administer the sale of the four named companies.

Q. Is it correct to say then that the products of all of these companies we have named are turned over to the Knox Glass Associates, Incorporated, for the purpose of sale?

A. The four companies I have mentioned.

Q. Now what position do you hold with the Knox Glass Associates?

[fol. 2899] A. I serve it in the capacity of its president.

Q. You are now its president, are you, sir?

A. Yes.

Q. Is it correct to say that the Knox Glass Bottle Company is the parent company of the four other companies?

A. The Knox Glass Bottle Company does not have a controlling interest of these other four companies, as I have just recited. However, the Knox Glass Bottle Company has more or less fathered the organization.

Q. Now when was the Knox Glass Bottle Company organized?

A. In 1917.

Q. Under the laws of what state?

A. Pennsylvania.

Q. When was the Pennsylvania Bottle Company organized?

A. I believe in 1925.

Q. And the Marienville Glass Company, when was that organized?

A. 1914.

Q. Is that the oldest of all the companies, 1914?

A. Yes.

Q. And the Wightman Bottle & Glass Manufacturing Company, when was it organized?

A. It was reorganized, I don't recall the date, but I believe some time around 1915.

Q. Under the laws of what state?

A. Pennsylvania.

Q. The Oil City Glass Bottle Company, when was that organized?

A. I believe in 1930. '29 or '30.

[fol. 2900] Q. And the Metro Glass Bottle Company, when was that organized?

A. 1935.

Q. And the Knox Glass Bottle Company of Mississippi?

A. 1933.

Q. Are you familiar with the inception and growth of each one of these corporations?

A. Yes.

Q. When did you yourself enter the glass business, Mr. Underwood?

A. The manufacturing business?

Q. Yes.

A. 1914.

Q. With what company were you then associated?

A. I organized the Marienville Glass Company at Marienville, Pennsylvania.

Q. And you have been in the glass business ever since 1914?

A. Yes.

Q. I assume you are quite familiar with the business of manufacturing glassware?

A. I am.

Q. Now, when the Marienville Glass Company was organized, what sort of equipment was used at the place of business at the Marienville Glass Company?

A. Hand blowers.

Q. That was in 1914?

A. Yes.

Q. How long did you continue to use hand blowers?

[fol. 2901] A. I think the Marienville continued hand blowers till 1921 or '22.

Q. Now, did any of these other companies come into existence by 1922?

A. Yes. The next company we formed was the Knox Glass Bottle Company, in 1917.

Q. Did it likewise use the same sort of equipment?

A. Hand blowers.

Q. When was the first time that you used any kind of automatic equipment?

A. If my memory serves me correctly, I believe we installed semi-automatic machines at Knox during the latter part of 1919 or the first part of 1920.

Q. What type of machinery was that?

A. That was known as the Warner machine and purchased by Knox from the Greensburg Glass Company, at Greensburg, Pennsylvania.

Q. Was that a patented machinery?

A. No. I don't know of any patent pending on that particular machine.

Q. And the machinery was bought outright, was it?

A. It was purchased outright.

Q. Now, when was the first automatic machinery used by any one of these concerns?

A. I believe that Knox installed fully automatic machines sometime in 1922 or 1923.

Q. What type of machine was installed at that time?

A. Installed with Lynch machine, L.A. type, and a Miller [fol. 2902] feeding device.

Q. Now the Lynch type that was installed, how was that acquired?

A. Beg pardon?

Q. How was that acquired, by purchase or by lease?

A. Purchase outright.

Q. How many of those were installed at that time?

A. About three.

Q. Now, you said that some Miller machines were installed. When were they installed?

A. Sometime during 1923.

Q. And that was installed at the place of business of which one of the companies?

A. Knox Glass Bottle Company at Knox, Pennsylvania.

Q. How many of those were installed?

Q. I think during the year 1923 there were three Miller feeding devices installed.

Q. How did you acquire them?

A. Purchased outright from the Miller Glass Engineering Company at Swissvale, Pennsylvania.

Q. Who was the inventor of those machines, if you know?

A. William J. Miller.

Q. Did you acquire those by purchase, as well as those other machines that you described?

A. Yes.

Q. Do you recall what you paid for those machines?

A. I think we paid $5,000 for the first Miller feeding device and possibly—a graduation downward in price to $2500. [fol. 2903] I don't recall what the intermediate figures were, but it was between -5,000 and $2500, according to the number of devices purchased, that regulated the price.

Q. At the time you acquired those machines did you receive some sort of written instrument accompanying the purchase?

A. Yes.

Q. What did those written instruments recite?

A. They gave to the Knox Bottle Company the right to use that device subject to a number of conditions that I am unable to recall just now, but one outstanding feature of that contract, if my memory serves me correctly, was that William J. Miller or the Miller Engineering Company would defend the patent.

Mr. Goodrich: Do you have the contract, Mr. Freed?

Mr. Freed: Thank you very much. At a later date I may need it and then I will ask you for it.

Mr. Goodrich: No, we are asking you for it, or we are objecting to the contents.

Mr. Freed: We don't have the contract. I thought you said that you have it.

Mr. Goodrich: No, I don't have it. I never heard of it.

Q. How long did you continue to use those Miller machines?

A. We are at present using the Miller machines.

Q. That same type Miller machine?

[fol. 2904] A. Substantially so.

Q. When, if at all, did you receive any word from Hartford with reference to any infringement by virtue of the use of those Miller machines?

A. I believe we began receiving infringement notices from the Hartford people sometime during the latter part of 1924 or early in 1925.

Q. Now, was there an association that was known as the Miller Feeder Users Association?

A. Yes.

Q. Defense association?

A. Yes.

Q. When was that association formed?

A. I think sometime during 1926 or '27 but immediately after the Miller Glass Engineering Company or the William J. Miller disposed of his feeding device business to the Hartford-Empire Company.

Q. When did he dispose of his business to the Hartford-Empire Company, do you know?

A. I don't recall the year, but I believe sometime during 1927, possibly.

Q. It is called to my attention that it was in 1925. Does that refresh your recollection?

A. Maybe it was.

Q. Was it in 1925?

A. Sometime between '25 and '27.

Q. Do you know the nature of that transaction by which Miller disposed of this machine to the Hartford-Empire [fol. 2905] Company?

A. Not in detail. I was advised, of course, that the Miller Engineering Company or William J. Miller had simply disposed of the patents or his applications to the Hartford-Empire Company.

Q. Do you know what the consideration was for that?

* * * * * * *

[fol. 2906] The Witness: I have no direct knowledge.

The Court: Ask another question.

Q. Now I ask you concerning the Miller Feeder Users' Defense Association, were you a member of that association?

A. Yes.

Q. Who were the other members of the association?

A. The individual companies?

Q. Individual companies or individuals, if there were any?

A. F. E. Reed Glass Company, Rochester, N. Y.; the Atlantic Bottle Company, New York City; the Lamb Glass Company, Mount Vernon, Ohio; the Phoenix Glass Company, at Monaca, Pennsylvania; the Jeannette Glass Company, at Jeannette, Pennsylvania.

Q. Did Universal Glass belong to it?

A. Universal Glass Company, Parkersburg, W. Va., and a few others, including our company. I just don't recall their names at this time.

Q. For what purpose was that association formed, Mr. Underwood?

A. To defend the patent situation with respect to the Miller feeders which we had purchased.

Q. In that connection did the association retain counsel?

A. Yes.

Q. Did it actually defend some lawsuits that were filed [fol. 2907] in connection with the Miller feeders?

A. I think the association defended the Lamb Glass Company suit, of Mount Vernon, Ohio.

Q. Can you tell the Court approximately how much money was spent by that association in the defense of this lawsuit?

A. Yes.

* * * * * * *

[fol. 2908] The Court: What was the last question?

Mr. Freed: The last question was with reference to the amount of money that was spent by the Miller Feeder Users' Defense Association, and objection was made as to his right to testify as to the amount that was spent by that association.

The Court: He may answer, if he knows, of his own knowledge.

The Witness: Approximately $130,000.

Q. And did Knox Affiliates contribute to that amount?

A. They did.

Q. What was the amount of money that was contributed by Knox Affiliates?

A. Approximately $21,000.

Q. And that was over a period of how many years?

A. From '26 through '32.

Q. Now, Mr. Underwood, in addition to the Miller machines that you have testified were installed in the plants of Knox Affiliates, were there any other automatic machines installed in those plants?

A. Yes, we developed and installed Knox-O'Neill vacuum machines.

Q. And from where did you obtain the Knox-O'Neill vacuum machines?

A. Jointly with the O'Neill Machine Company of Toledo, we developed it in our own plant.

[fol. 2909] Q. Who is the Knox-O'Neill Company?

A. The Knox-O'Neill Company is a small corporation, subsidiary of the Knox Glass Bottle Company.

Q. Who formed the Knox-O'Neill Company?

A. The Knox Glass Bottle Company.

Q. Is its stock owned entirely by the Knox Glass Bottle Company?

A. Yes, sir.

Q. Did you organize it yourself?

A. Yes, sir.

Q. What was the purpose of organizing that company?

A. To take over the exclusive sale of the Knox-O'Neill machines throughout continental United States.

Q. Now, who invented the Knox-O'Neill machine?

Mr. Goodrich: Objection, please. That question, I think, is a matter that has been the subject of court decisions. I think it is improper to ask this question.

Mr. Freed: Very well, I will ask the question——

Q. From whom did you obtain the Knox-O'Neill machine?

A. From the O'Neill Machine Company, Toledo, Ohio.

Q. Now, in addition to using those machines in your own plant, did you have occasion to sell any of those machines?

A. Yes, during the period from 1928 through August, 1930, we sold 12 or 15 of the machines.

Q. Will you relate to the Court to whom you sold those machines?

[fol. 2910] A. We sold Ball Bros., Muncie, Indiana; Carr-Lourey Glass Company, Baltimore, Maryland; American Glass Works, Paden City, W. Va., Hart Glass Company, Dunkirk, Indiana; Whitall-Tatum Company, Millville, N. J. I believe that is all.

Q. Now, how many of those machines did you install in your own plant?

A. Eight.

Q. Did you have occasion to discuss the question of selling any of those machines to anyone at the Illinois Glass Company?

A. Yes.

Q. With whom?

A. Mr. Levis or Mr. Boeschenstein.

Q. Will you relate to the Court just what occurred?

A. Some time during 1929 the Illinois Glass Company sent two of their representatives, Mr. Boeschenstein and Mr. Bernard, to our plant at Knox for the purpose of reviewing the machine in operation, after which I was extended an invitation to meet Messrs. Levis and Boeschenstein.

Q. Which Mr. Levis was that?

A. Mr. Will Levis,—and Boeschenstein, in St. Louis or at their Alton, Illinois, plant.

Q. What occurred there?

A. I met both of the gentlemen and went through their plant at Alton, Illinois, after which they entertained me for a few hours and I returned.

Q. Did you ever sell them any of those machines?

[fol. 2911] A. No sir.

Q. Did they tell you the reason why they were not interested in it, if at all?

A. No, I cannot say that they ever told me why they weren't interested in the machine. I drew my own conclusions.

Q. Now, did you talk to anyone connected with the Hartford-Empire Company with reference to the proposed sale of Knox-O'Neill machines?

A. Yes, early in 1929 Mr. Goodwin Smith paid us a visit to the Knox plant and reviewed the machine in operation, after which I believe that a conference was arranged between Mr. Herbert Knox Smith, Mr. Goodwin Smith, and myself at Buffalo, and the matter of the machine was discussed in great detail.

Q. Now, will you relate to the Court what discussion took place with reference to the machine, as nearly as you can remember it?

A. If I recall correctly, Mr. Goodwin Smith informed me that in his opinion the machine operating as we were operating at Knox was very novel and unique inasmuch as we operated the machine without the use of a revolving pot, using, of course, a stationary forehearth. And I believe in that conference I was asked by Mr. Goodwin Smith how we proposed to market the machine, whether by sale outright or royalty. I informed them that Mr. O'Neill and myself had not reached any decision with respect to how the machine should be disposed of or distribution made, but that we thought it would be sold outright. During that confer- [fol. 2912] ence the matter of disposing of our interest or causing Mr. O'Neill to dispose of his, to the Hartford-Empire, was discussed, but there were no conclusions reached.

Q. Now, was that the extent of the conversation?

A. At Buffalo, yes.

Q. Now, were there any further conversations?

A. Yes, I think that Mr. Frank O'Neill joined me in meeting Mr. Smith and some of his staff in New York on one occasion, and if my memory serves me correctly we met, Mr. O'Neill and I, met Mr. Herbert Knox Smith and some of his assistants in Toledo subsequent to our New York meeting.

Q. Can you tell us about when that was?

A. Sometime during the summer of 1929.

Q. Now will you relate to the Court the conversation that occurred at Toledo?

A. At Toledo, again, the matter of distributing the machine was discussed. Mr. Frank O'Neill, if I recall correctly, was interested in selling his letters patent on the machine, or, rather, application for patent, provided a fair consideration could be obtained. We, of course, were considered in the picture substantially, because we had an exclusive sales-right on the machine, which I do not believe was cancellable at the option of Frank O'Neill.

Q. You say it was or was not?

A. It was not. It appeared that the consideration that Mr. Frank O'Neill wanted for the machine, or the applications for the letters patent reading on the machine, was far [fol. 2913] in excess of what interested Hartford-Empire Company, and as a result of it, I believe our records will show, that Mr. Herbert Knox Smith advised not only Mr. Frank O'Neill but the Knox-O'Neill Company, that they were not interested in purchasing any part of the Knox-O'Neill outfit.

Q. Now, I had neglected to ask you a moment or two ago as to the conversation that occurred either at Alton or elsewhere in connection with your talks with Mr. Levis on the subject-matter of the Knox-O'Neill machine?

A. I don't recall that Mr. Levis and I ever discussed in much detail the Knox-O'Neill machine, other than a general interest in the Illinois Glass Company purchasing the machines for use in their plant at Alton, had they continued to operate as the Illinois Glass Company.

Q. Now, do you know how soon after that conversation occurred that the Owens-Illinois Company came into existence?

A. A few months.

Q. Now, was there another machine or a feeder that was known as the O'Neill Feeder, in addition to the Knox-O'Neill machine?

A. Yes, Frank O'Neill developed what was known as the O'Neill feeder, and we employed possibly six or eight of such feeders in our plant.

Q. Which one of the plants?

The Court: What was the Knox-O'Neill machine—was it a forming machine?

The Witness: Yes sir.

[fol. 2914] The Court: Now, you are speaking of the O'Neill machine as a feeder?

The Witness: That is right.

Q. How many of those O'Neill feeders did you employ?

A. I believe that we employed possibly six or eight of the O'Neill feeders, in conjunction with the Miller feeders we had installed in the plants.

Q. Now, did the Knox Bottle Company have facilities to develop or improve these automatic machines?

A. Not to any great extent. We always carried a few engineers, and established a small engineering department for the purpose of handling our own particular work, that is, maintenance and the development of our own particular manufacturing requirements.

Q. Now, did the Knox-O'Neill Company have facilities for development?

A. No, they used whatever Knox had.

Q. Now, will you tell the Court why the Knox-O'Neill Company or the Knox Bottle Company was interested in the development of these Knox-O'Neill machines?

A. As a result of the Hartford-Empire Company becoming so aggressive in the industry with respect to feeding devices——

Mr. Haight: I think we will have to object to the word "aggressive", if Your Honor please. That is a conclusion. Let's have the facts.

Mr. Freed: Why, the evidence clearly discloses that, Judge.

Mr. Haight: All right, but I don't want the witness' con- [fol. 2915] clusion as to what is aggressive and what is not aggressive. That may be an important element in this case.

The Court: He may explain what he means by the word "aggressive".

Q. Go ahead, tell us why you say they were aggressive; what did they do?

A. After the Hartford-Empire Company had purchased the business of the Miller Engineering Company, whose feeders we were substantially using, our company became very much concerned with respect to the future of its operation, not so much as regards the payment of royalty in the event the patents were adjudicated adversely to our company, but due to the fact that we felt that the license might not be available to us under any circumstances. So, therefore, I decided that the best thing our company could do would be to try and develop, or at least attempt to develop, some machinery competitive to the Hartford-Empire Company's equipment. As the result of that, Mr. Frank O'Neill contacted me sometime during 1927, and stated that in his opinion he had a suction device that, if developed, would avoid the patent situation with respect to Hartford.

I reviewed the matter in much detail and decided to go along with them, and we developed, as you know, the Knox-O'Neill Vacuum Machine, which was relinquished to O'Neill sometime in August, 1930. In 1931 Mr. Peter Kucera, an engineer, who had been installing glass feeding devices in Russia prior thereto, contacted me and wanted to know if [fol. 2916] I would finance his development of a feeding device. I requested him to submit to me, in a general way, what he had in mind. He stated he had a plunger feeding device in mind. I said, "No, we are in enough of trouble and difficulty with respect to plunger feeders. We are not interested in developing or financing you along that line, but if you can develop a vacuum feeder,—that is a feeding device that would create the impulse by use of pressure rather than the plunger,—that we would proceed to finance you." And we did. As a result of that we developed, through the balance of 1930 and to 1931 and the first part of 1932, what was known as the Kucera feeder, and placed it in one of our plants at Sheffield, Pennsylvania, early in 1932, and were operating it fairly successfully. In fact, we were extremely pleased with the structuve, fairly well pleased with the quality of glass being manufactured by use of this Kucera feeder, and felt somewhat comfortable with respect to our position in the event our Miller patents were found to infringe the Hartford.

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[fol. 2917] Q. Now, Mr. Underwood, you tell us whether or not the Knox-O'Neill vacuum machine is something like the Owens process.

A. Yes, to some extent, that is, the Knox-O'Neill vacuum machine takes its charges substantially as the Owens machine takes its charges, from the body of molten glass.

Q. Now, the O'Neill feeder, is that similar to the Hartford feeder?

A. I would say it was more similar to the Miller feeder, operating with a plunger.

Q. Now, Mr. Underwood, do you know a man named Soubier?

A. Yes sir.

Q. Did you see Mr. Soubier at your plant at Oil City, or at any of your plants?

A. Yes, Mr. Soubier entered one of our plants at Knox late, I think, in 1928, the fall of 1928.

Q. Will you relate to the Court the circumstances under which you met Soubier at your plant?

A. About 9 o'clock one evening I was assisting one of our engineers in our plant at Knox, working on the Knox-O'Neill machine, also its development, among other things, and I observed at the time, I noticed Mr. Soubier in the plant, and immediately——

Q. Did you know who he was?

A. Oh, yes, I knew who Mr. Soubier was. I had a casual acquaintance with Mr. Soubier prior to this time.

[fol. 2918] Q. With what company was he connected?

A. The Owens-Illinois Glass Company.

Q. All right. Tell us what happened.

A. Well, I asked him as nicely as I could to evacuate.

Q. Did he evacuate?

A. Yes, he did; he courteously evacuated.

Q. Now, Mr. Underwood, coming to the summer of 1932, will you tell the Court what was the extent of the automatic equipment at your various plants, naming the numbers of units?

A. About the middle of 1932 the Knox group of companies were operating twenty-five feeding devices and eight Knox-O'Neill vacuum machines. Of those feeding devices, I believe that there were about fifteen,—well, possibly seventeen or eighteen,—Miller devices, and the balance of the twenty-five, the remaining eight, were O'Neill; or, in other words, there were a total of thirty-three units operating.

Q. And those were divided in the various plants of Knox Affiliates?

A. Right.

Q. Now, what was the volume of business that you did at that time?

A. I would say the total—you mean dollar volume?

Q. Dollar volume.

A. I would say approximately between three and a half and four million of dollars per annum.

Q. What percentage of the total volume of the entire [fol. 2919] industry would that constitute?

A. I would say at that time that represented probably 2½ to 3 per cent.

Q. Now, at that time did you manufacture milk bottles?

A. Yes sir.

Q. And what amount of milk bottles did you manufacture at that time per year?

A. I would say the maximum number of gross we manufactured during any one year we manufactured milk bottles, was approximately 150,000 gross.

Q. Was that business profitable?

A. Yes, the business was profitable.

Q. Now, did you manufacture fruit jars at that time?

A. Yes, we manufactured fruit jars.

Q. And at what plant did you manufacture?

A. We manufactured fruit jars—well, a few in most of our plants.

Q. Was that business profitable?

A. It was.

Q. Now, did you manufacture carbonated-beverage bottles?

A. Not to any extent. If my memory serves me, I think just merely possibly for one or two accounts.

Q. Now, what type of equipment did you use for the manufacture of the fruit jars and the milk bottles?

A. We used the Miller feeder and William J. Miller press machine, and the Ed Miller press machine, press and blow machine.

Q. Did you use the Knox-O'Neill machines for the manufacture of milk bottles?

[fol. 2920] A. No sir.

Q. Nor of the fruit jars?

A. Yes sir.

Mr. Goodrich: "No sir" on the milk bottles and "yes" on the fruit jars?

The Witness: Will you ask me that question again?

Q. I will ask you what automatic machines you used, first, for the manufacture of milk bottles and fruit jars?

A. The William J. Miller and the Miller press machine, that is the first we used for both fruit jars and milk bottles. In a few instances we used the Lynch machine for fruit jars, but mostly the Miller press machine.

Q. Mr. Underwood, when and if at all, did you become a Hartford licensee?

A. August, 1932.

Q. Now, will you relate to the Court, please, the circumstances under which you became a licensee?

A. During the years between 1925 and 1932, we, of course, were pressed from time to time by the Hartford-Empire Company stating in many instances that the feeding devices we were using were infringing their patents. We received by registered mail at almost regular intervals during that period, letters to that effect. Our company, not being a large company,—that is, financially large,—it gave us a lot of concern as to what the ultimate outcome might be with respect to our business, although we did, during the period of 1925 to 1932, attempt to develop other means [fol. 2921] of operating our plants. However, it came to a showdown sometime during 1932, that is, early in 1932, following through to August. I was invited to come to Hartford to meet Mr. Brown and Goodwin Smith. I sensed that the last invitation I had was more sincere, probably, than those received theretofore, and appreciating that situation I met him and his staff in his office at Hartford.

Q. Now, permit me to interrupt, Mr. Underwood. Prior to your going to Hartford, had you been asked to bring any reports or any figures with you?

A. Yes, Mr. Smith requested me to compile a record setting forth the number of gross we had manufactured, I believe from 1925, the time of the issue of the Peiler patent, to date. The compilation was made by our various companies and it was submitted to him by me at Hartford.

Q. Permit me to interrupt you again. At that time, or at or about that time, were you familiar with the litigation between Hazel-Atlas and Hartford-Empire?

A. Yes sir.

Q. And prior to your going to Hartford had you seen the announcement with reference to the contract arrangement, if any, that was arrived at between Hazel-Atlas and Hartford?

A. Yes sir.

Q. I am going to show you government's exhibit 150, Mr. Underwood. Will you look at that exhibit, please, and tell the Court whether or not prior to your going to Hartford [fol. 2922] you had seen that announcement in any of the trade journals?

A. Yes, I read this in The American Glass Review during, I think, the first part of July.

Q. Did you have any further knowledge other than what you had obtained as the result of reading this announcement in this trade journal that you have described, concerning the arrangements that were arrived at between Hazel-Atlas and Hartford?

A. No sir.

Q. Now, will you continue and tell the Court what happened at Hartford when you got there?

A. Well, when I reached Hartford I sensed that Mr. Smith was very serious with respect to our company continuing to operate without entering into an agreement.

The Court: What was said and done, Mr. Underwood?

The Witness: Well, when I entered Mr. Smith's office he had his staff there.

Q. Will the Court permit me to ask one question before that? Who went with you to Hartford?

A. On one occasion my brother, Mr. C. R. Underwood, went with me.

Q. Is this the occasion which you are now describing?

A. I think that this is the occasion.

Q. Did you have counsel with you at that time?

A. No.

Q. Now, at that meeting who was representing Hartford?

A. Well, I think sitting in the room with Mr. Smith at that time was possibly Mr. Eldred——

[fol. 2923] Q. Who was Mr. Eldred?

A. Their general manager.

Q. Who else?

A. And I believe that their patent counsel, Mr. Brown, was there, and I am not sure with respect to Mr. Parham, whether he was sitting in the conference or not; and that is about all I can remember; those are the ones I can definitely remember were sitting in the room, in Mr. Smith's office.

Q. Mr. Smith also, of course?

A. Oh, yes.

Q. Will you tell us just exactly what was said, or as nearly as you can recall now?

A. Well, Mr. Smith said to me, he said: "Now, we are here on a very—we are here to discuss a very serious situation, and, Roy, you have thumbed your nose at me for the last time, and we want to get down to business and discuss your position with respect to operating the devices you are operating without a license from us."

Q. Now, what did you reply to that?

A. Well, I stated that it would be impossible for us to enter into any agreement if it called for the remittance of the sum compiled, as they stated would be for damages and infringement, and so on and so forth.

Q. Now, what was the sum that was compiled?

A. Approximately $630,000.

Q. What was your capitalization at that time, the capital- [fol. 2924] ization of Knox affiliates?

A. Well, I believe that we had outstanding, the Knox Glass Bottle Company had outstanding at that time approximately $400,000 of capital stock, at par value.

Q. Now, what items were the items that constituted this amount of $630,000, do you recall?

A. Beg pardon?

Q. What were the various items that made up this amount of $630,000?

A. It was compiled upon the basis of the gross we manufactured, the number of gross, extended upon the basis of their regular royalty rates. The total extension represented $630,000.

Q. Now, what did you say, if anything?

A. I simply told them we could not do it.

Q. Were there additional or later conferences?

A. In that same conference, I think, Mr. Smith said that the amount payable could be reduced one-half, or approximately $300,000.

Q. That same conference?

A. In that same session of that conference.

Q. What did you say to that?

A. Well, I didn't see how we could do that. And he said —well, it was getting along in the day, in the evening, and he said, "Well, we will reconvene tomorrow morning. You think it over tonight and give me your answer tomorrow morning when we meet again."

Q. Was there an additional conference the following day?

[fol. 2925] A. Yes, the following day I think we reconvened between 10 and 11 o'clock.

Q. What happened then?

A. I told Mr. Smith at that conference, I mean at that session, that I had thought the thing through and we could not afford to pay him $300,000, or approximately $300,000, damages; but if we were granted a license for the same number of units we were now operating as feeder units—25—and the same rights we had, the same class of ware that we were manufacturing, and if he would accept $100,000 in notes, that we would enter into a license agreement, paying $100,000, remitting the same in a series of notes and taking a license on 25 of their feeder units.

Q. Now, were there other or additional conferences?

A. Why, I believe that Mr. Arthur Safford came to Knox.

Q. Oh, at Hartford I mean, were there other conferences?

A. No, not subsequent to that, that I know.

Q. Now, was there a conference at Hartford,—to refresh your recollection,—at which Mr. Kucera was present?

A. Yes, I think that was prior to my conference with Mr. Goodwin Smith. I am not sure but I think it was prior to my early August conference with Mr. Smith.

Q. How long before that August conference was that?

A. Well, possibly two or three weeks.

Q. Now, at that conference at which Mr. Kucera was with you, was anyone else present outside of these gentlemen whom you have named?

[fol. 2926] A. Yes, I think Mr. C. R. Underwood also sat in that conference.

Q. Do you know a gentleman named Mr. Hazelton?

A. Yes, Mr. B. F. Hazelton was in the office with Mr. Smith at the time that we entered.

Q. And who was Mr. Hazelton?

A. He was at that time, I believe, a director and vice-president of the Owens-Illinois Glass Company.

Mr. Middleton: Pardon me, I am a little confused. Which conference—at which Mr. Kucera was there, or the other?

Q. At which one of these conferences to which you have made reference, either the conference at which Kucera was present or the other conference, was Mr. Hazelton present?

A. I don't recall whether it was the first or second conference that I had with Mr. Goodwin Smith, that Mr. Hazelton sat in. I don't recall which conference.

Q. What was the subject-matter of the conference at the time Mr. Kucera was present?

A. Well, he had been developing the Kucera feeder, of course, we financed it, and Mr. Kucera was interested, of course, in selling his feeder license, or his applications for patents to the Hartford-Empire Company, and in order to do so he negotiated in conjunction with us.

Mr. Middleton: What was the question?

Mr. Freed: The question was, what was the subject-matter of the conference at the time Mr. Kucera was [fol. 2927] present?

The Witness: I believe it was simply a negotiating, negotiations between Knox, Knox-O'Neill, Mr. Kucera, and the Hartford-Empire Company.

Q. Was the subject-matter of the Hartford license discussed at the time Mr. Kucera was there?

A. Yes, it was all brought in, the entire August, 1932, settlement, was part and parcel of the conference.

Q. Now, was anything said concerning contributions, if any, by Owens-Illinois, or any participation by Owens-Illinois, with reference to these back royalties?

A. No, not that I recall.

Q. Was the subject-matter of the Hazel-Atlas and the Hartford-Empire agreement mentioned in any fashion whatever at that time?

A. Yes, I was led to believe that the agreement with the Hazel-Atlas, the license——

Mr. Middleton: I object to the beliefs.

Q. Tell us what was said, instead of what you were led to believe, as near as you can remember.

A. I was told by Mr. Smith that Hazel-Atlas had entered into an agreement with the Hartford-Empire, a regular license agreement such as was being presented to me.

Q. Were you at that time familiar with all of the details and all of the conditions of the Hazel-Atlas and Hartford agreement?

A. No sir.

Q. When did you first learn of all of the conditions of [fol. 2928] the Hazel-Atlas and Hartford agreement?

A. At the TNEC hearing in Washington.

Q. Had you known of all of the conditions of that agreement would you have entered into this license agreement?

Mr. Goodrich: Objection, please.

The Court: Sustained.

Q. Now, at the time of these conferences, was the subject-matter of the Owens agreement with Hartford discussed?

A. What agreement have you reference to?

Q. Any agreement?

A. No.

Q. Now, after you had made your trip to Hartford, what happened after that with reference to your proposed license agreement with Hartford?

A. Mr. Safford, with his assistants, came to Knox and concluded the agreement with us.

Q. Mr. Safford came to Oil City, is that correct?

A. That is true.

Q. Did anybody come with him?

A. Yes, Mr. Eldred came with him, and I think his secretary, probably his stenographer.

Q. And did you have any further discussions with Mr. Safford concerning the terms of the Hartford license?

A. Nothing more than ironing out the detail of the agreement, the drafting of it.

Q. And was the agreement actually drafted at Oil City?

A. I believe it was.

Q. I am going to show you government's exhibit 151, [fol. 2929] which, if the Court please, is the license agreement that was offered. Will you look at this agreement and tell the Court whether or not that was the agreement that was executed at Oil City by yourself on behalf of Knox affiliates?

A. (Witness examines same.)

Q. Have you looked at it?

A. Yes.

Q. Was that the agreement that was executed at Oil City?

A. Yes.

Q. Now, I want to direct your attention to Schedule "B" of this agreement, which names the permitted ware, and among the permitted ware there appears, "blown bottles, pressed and blown bottles and jars, prescription and proprietary medicine ware, condiments and packers' ware, and Item 3 says, "Milk and cream bottles, provided, however, that the total number produced by Knox and/or said affiliates on said leased machinery shall not exceed 75,000 gross in any one calendar year." Now, prior to the execution of this agreement, did you have any discussion with anyone at Hartford or at Oil City with reference to the limitation of 75,000 gross?

A. Part of our conference and negotiations at Hartford.

Q. And what was said concerning that?

Mr. Emery: If the Court please, may we have it understood whatever is testified to is not binding on other defendants until connected up; the same understanding we had about exhibits under similar conditions. I can see this [fol. 2930] might lead to some statements pro and con involving, possibly, somebody else in the milk bottle business.

The Court: I suspect whatever statements the witness makes would not be binding upon others unless and until the Court concluded that a conspiracy had been established.

Mr. Emery: Well, yes, that is the ruling I had in mind.

The Court: Yes.

Mr. Emery: That is the previous ruling which Your Honor had made.

The Court: Yes.

A. I, of course, wanted an unrestricted right on all of our lines, including milk bottles, and I was informed we could not receive a license for the manufacture of milk bottles in any quantity, at first.

Q. Who told you?

A. Mr. Goodwin Smith.

Q. Well, what was said later?

A. I, of course, informed them that that would create an impossible situation for us, and as a result of our objecting to taking a license without some milk bottles, it was finally decided upon 75,000 gross as a limit per annum.

Q. Who decided on that?

A. Hartford-Empire Company. That is the amount they gave us.

Q. Now, I want to direct your attention to Item 4 in Schedule "B", which reads: "Beverage bottles, excluding, [fol. 2931] "however, pressure ware for containing artificial carbonated drinks, such as sodas, ginger ales, mineral waters, and other soft drinks". Was there any discussion with reference to that matter prior to the execution of this agreement?

A. We asked for it but didn't insist upon it.

Q. What did you ask for?

A. We asked for the right to manufacture carbonated beverage bottles, and we didn't insist on it. We didn't receive it except for a few bottles to be shipped to one particular customer.

Q. What particular customer was that?

A. I think it was the Miller-Becker Company in Cleveland, Ohio.

Q. Now, as the result of that conference and those negotiations, was Item 7 inserted in this schedule, which reads: "Bottles for ginger beer made of amber to be sold to Miller-Becker Company, of Cleveland, Ohio"?

A. Yes sir.

Q. Now, aside from the permission to make those amber bottles for Miller-Becker only, of Cleveland, did you have the right, or did they give you a right, to manufacture any others?

A. Any other carbonated beverage bottles?

A. Yes.

A. No sir.

Q. Now, Mr. Underwood, I want to direct your attention to the exclusions which appear in this contract, and in those [fol. 2932] exclusions there are bulbs and tubing and cane signal and optical ware, ware intended and adapted for use where heat resistance, physical strength or electrical properties of such ware are of substantial value; ware intended and adapted for holding food in the process of cooking or sterilizing; mold blown articles of glass, etc.; ware which is pressed and not blown. Had you been manufacturing any of those items?

A. No sir.

Q. Were you told why those items were included in this particular agreement?

Mr. Sayles: I object to that as incompetent, immaterial and irrelevant and not binding on Corning Glass Works.

The Court: Overruled; he may answer.

Mr. Sayles: Exception.

A. What is your question?

Q. Were you told why those various items were excluded and included as exclusions in this contract?

A. I do not believe they were discussed.

Q. They weren't discussed at all. Now, I want to direct your attention to paragraph "g" which says: "Tumblers, fruit jars for domestic (household) use, gas globes, chimneys, vault lights, battery jars and battery containers, fish globes, display jars, insulators, drawn tubing and canes." Was that item discussed prior to the execution of this agreement, with anyone?

A. Yes sir, the tumblers, that is the pressed tumblers and [fol. 2933] fruit jars, two items in that schedule.

Q. And with whom did you have that discussion?

A. Mr. Goodwin Smith.

[fol. 2934] Q. What was said?

A. He was not in position to grant us the right to manufacture fruit jars or tumblers on our feeding devices.

Q. Did he tell you why?

A. No, I don't know that he advised why. He declined it and denied it.

Q. Mr. Underwood, at or about the time of the execution of this license agreement, was any other agreement or agreements executed about the same time?

Mr. Goodrich: Would counsel be a little more specific, please? Between whom?

Mr. Freed: I am asking him if there were any other ones between the same parties or other parties, at the same time?

A. It was concurrent with the execution of the Hartford-Knox agreement, which was the agreement of Peter Kucera.

Q. And that agreement was executed between whom?

A. Between the Hartford-Empire Company, Peter Kucera, and the Knox group of companies.

Q. Who drafted that agreement?

A. Mr. Freed, I don't know whether our attorney drafted that or the Hartford attorney.

Q. Mr. Underwood, I am going to show you a photostatic copy of an agreement, which is marked Government's Exhibit No. 598; showing you the last page of it——

Mr. Stecher: May we have the date of that please?

Mr. Freed: I am going to show it in just a second.

[fol. 2935] Q. I am going to show you the last page of it and the signatures that appear on that page. Did you execute this agreement?

A. Yes, sir.

Mr. Freed: The agreement is dated the 25th day of August, 1932. It is a cancellation of the Kucera agreement, between Mr. Underwood and Mr. Kucera.

Q. Can you tell us where this cancellation agreement was executed?

A. If memory serves me correctly, either in Knox, Pennsylvania, or Pittsburgh.

Q. For the purpose of refreshing your recollection, the license agreement between Hartford and yourselves was executed the 25th day of August. When, with reference to the execution of that agreement, was this cancellation of the Kucera agreement executed?

A. Concurerntly.

Q. Where was the Hartford license agreement executed?

A. I believe it was executed at Knox.

Q. And you say this was executed at the same place?

A. Yes, sir.

Mr. Freed: We offer it in evidence at this time, if the Court please.

The Court: It may be admitted, over objection.

Mr. Middleton: May we have a moment, just to glance at this and see what it is?

Q. I am going to show you a photostatic copy of a com- [fol. 2936] munication which purports to be addressed to the Knox Glass Bottle Company, by Hartford-Empire Company, under date of August 25, 1932, which is marked Government's Exhibit No. 599. I will ask you to look at it, please, and tell us whether or not that is your signature that appears at the bottom of that letter?

A. Yes, sir.

Q. I will ask you whether or not this letter, which is in the nature of an agreement, was executed at or about the time of the execution of the Hartford license agreement and the cancellation of the Kucera agreement?

A. Yes, sir.

Mr. Freed: I want to offer this in evidence at this time, if the Court please.

The Court: It will be admitted, over objection.

Mr. Freed: I should like to read this at this time, if the Court please.

The Court. It may be done.

Thereupon, Government's Exhibit No. 599 was read to the Court by Mr. Freed, of counsel for the government.

Q. As a result of this license agreement and the modification of it, or additions to it, were you empowered or authorized to establish a plant on the west coast and use the equipment?

A. No, sir.

Q. Did this license agreement cover all of the equipment [fol. 2937] that was contained in the various plants of Knox affiliates?

A. All except the Knox-O'Neill Vacuum machine.

Q. It made no reference to the Knox-O'Neill Vacuum machine?

A. No, sir.

Q. What happened to the actual physical possession of this machine after the execution of this license agreement?

A. We divested ourselves of title, and executed a bill of sale to Hartford-Empire.

Q. Did the machines remain in your possesion?

A. Yes, sir.

Q. Did you continue to use exactly the same machines?

Mr. Williams: If it please the Court, it is not clear whether he is speaking of vacuum machines, forming machines, feeders, or what he is talking about.

The Court: I am not clear upon that either.

Q. I am referring to all equipment in the factory of your various affiliates. Was there any change made in the actual physical possession of any of the equipment, including all of the machines, after the signing of the agreement?

A. No change made, except we transferred title covering the feeders, only, to Hartford-Empire Company.

Q. Did those feeders remain in your possession?

A. Yes, sir.

Q. The same feeders?

A. Yes, sir.

[fol. 2938] Q. Did you acquire any additional equipment from Hartford as a result of the signing of this license agreement?

A. No, sir.

Q. When did you first use the Hartford equipment as such?

A. Hartford feeders, you are referring to?

Q. Hartford feeders?

A. 1937.

Q. That was five years after the execution of this agreement?

A. Yes, sir.

Q. During those five years, you continued to use exactly the same machinery that you had used?

A. Yes, sir.

Q. Did you continue to manufacture milk bottles?

A. We continued to manufacture milk bottles at about the same volume, up until November or December of 1932.

Q. That was of the same year that this contract was executed?

A. That is right, sir.

Q. You manufactured on the basis of 150,000 gross of bottles a year?

A. That is right.

Q. That was by virtue of some other arrangement with Hartford, other than as contained in that contract?

A. No, the contract provided for 75,000 gross, a limit of 75,000 gross; however, Hartford gave us a number of months to reduce our production from its level in August of 1932, to the 75,000 gross provided for in the agreement.

Q. After the execution of this license agreement, did you [fol. 2939] continue to manufacture fruit jars?

A. Not by the use of feeders?

Q. What type of machinery or equipment did you use to manufacture fruit jars?

A. Knox-O'Neill Vacuum machine.

Q. On the subject matter of the use of that machine for the manufacture of fruit jars, did you have any correspondence or any talks with anyone at Hartford-Empire Company?

A. Prior to the signing of the agreement?

Q. Subsequent to the signing of the agreement?

A. Yes, sir.

Q. Will you tell the Court just what that was, please?

A. Subsequent to the signing of the August, 1932, agreement, I was advised by, I think, Mr. Eldred, of the Hartford-Empire Company, some time between August and December of 1932, that their interpretation of the restrictions placed on the feeding devices should also read on the Knox-O'Neill machine; to which I did not agree.

Q. What did you say in reply to that?

A. My reply was simply this: that I did not think the restrictions incorporated in the agreement had anything to do with glass being manufactured on the Knox-O'Neill machine.

Q. Mr. Underwood, I am going to hand you Government's Exhibit No. 182, which is a letter addressed to Mr. R. R. Underwood, Knox Glass Bottle Company, by Hartford-Empire Company. I will ask you to look at that letter and tell the Court whether or not you received that letter, [fol. 2940] in connection with the discussion of your use of that suction machine for the purpose of manufacturing fruit jars.

A. Yes, I received that letter.

Q. Is that the letter in which your attention was called to the fact that you were not permitted to manufacture fruit jars in those machines?

A. Yes, sir.

Q. I am going to hand you Government's Exhibit No. 183, and ask you to look at that letter, and tell the Court whether or not that is the reply that you sent to Hartford-Empire Company to their letter of December 23rd on that subject matter?

A. Yes, sir.

Q. Is that the letter you wrote in which you told them you disagreed with them as to your right to use these Knox-O'Neill machines for the purpose of manufacturing fruit jars?

Mr. Goodrich: Objection. The letter will speak for itself.

The Court: He may answer that question.

A. My answer to that is yes.

Q. Subsequent to the exchange of that correspondence, were you asked or invited to come to Hartford to discuss the matter with representatives of Hartford?

A. Yes, sir.

[fol. 2941] Q. I am going to show you Government's Exhibit 184, ask you to look at it, and tell the Court whether or not it was in that letter that you were asked to go to Hartford for the purpose of discussing that subject matter?

A. Yes, sir.

Q. Did you go to Hartford to discuss it with them?

A. I am not certain whether I went to Hartford or met Mr. Smith in New York.

Q. Did you discuss the questions raised in that correspondence with Mr. Smith?

A. Yes, sir.

Q. Will you relate to the Court what was said?

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A. Mr. Smith substantially confirmed what Mr. Eldred had already advised us, that in his opinion we had no right to manufacture fruit jars by the use of the vacuum machine; that his interpretation of the restrictions was substantially that of Mr. Eldred's, in respect of restrictions.

Q. What did you tell them with reference to what you proposed to do?

A. I advised them that I proposed to continue using the vacuum machine for the purpose of manufacturing fruit jars.

Q. What did you eventually do with your fruit jar business?

A. Sold it to the Ball Brothers Company, Muncie, Indiana.

Q. Tell us how that came about, Mr. Underwood.

(Morning recess.)
(Question read.)

A. I think that Mr. George Ball contacted me some time [fol. 2942] during the latter part of 1932 or the early part of 1933, and asked for a meeting at some convenient point. I don't recall whether I met first with Mr. Ball or Mr. Ball's representatives in New York, or I met them in Muncie. However, I do recall of meeting Mr. Frank Ball and Mr. George Ball in Muncie, Indiana, and discussing the possible sale of our fruit jar business.

Q. Will you relate to the Court just what was said?

A. In my conference with the two Ball men, I was informed by Mr. Frank Ball that he had been informed that we were infringing the Hartford patents by the use of our Knox-O'Neill machine.

Q. Did he tell you by whom he was informed to that effect?

A. By the Hartford people. And I asked him what had that to do with respect to our conference. He said, "Well, in the event that you continue manufacturing fruit jars on your vacuum machine, the possibilities are, or at least I have been informed, that the Hartford-Empire Company will sue you for infringement. One point led on to another until we discussed the possible sale of our fruit jar business. He offered us, I think, first and at a subsequent meeting I believe in New York, the sum of $25,000.